

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION
IN RE: C.R. BARD, INC.,
PELVIC REPAIR SYSTEM Master File No.
PRODUCTS LIABILITY 2:10-MD-02187
LITIGATION MDL No. 2187

THIS DOCUMENT RELATES TO JOSEPH R. GOODWIN
U.S. DISTRICT JUDGE
Veronica Madsen, et al., v.
C.R. Bard, Inc., Case No.
2:16-cv-11633

DEPOSITION OF RADHA KRISHNA UPPUTURI, M.D.
Taken on Behalf of Plaintiffs
June 27, 2017

Kathleen E. Maloney, CSR, RPR, FCRR
Il. No. 084-003235

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Veronica Madsen, et al., JOSEPH R. GOODWIN
v. C.R. Bard, Inc., Case U.S. DISTRICT JUDGE
No. 2:16-cv-11633

The deposition of RADHA KRISHNA UPPUTURI, M.D.,
taken under oath on June 27, 2017, between the hours
of 8:00 a.m. and 11:10 a.m. at Central DuPage
Hospital, 25 North Winfield Road, Third Floor, Risk
Management Conference Room, Winfield, Illinois,
pursuant to the Rules of the United States District
Court, pertaining to the taking of depositions,
before Kathleen E. Maloney, License No. 084-003235,
a notary public in and for the County of Cook and
State of Illinois, pursuant to notice.

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APPEARANCES:
TORHOERMAN LAW, L.L.C.
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Chicago, IL 60606
Appeared on behalf of Plaintiffs;
GREENBERG TRAURIG, L.L.P.
MR. MARTIN S. KEDZIORA
77 West Wacker Drive, Suite 3100
Chicago, IL 60601
Appeared on behalf of Defendant;

BAKER & ENRIGHT
MR. PATRICK J. VEZINO
33 West Jackson Boulevard, Third Floor
Chicago, IL 60604
Appeared on behalf of Deponent.

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1 (Whereupon, Upputuri Exhibit
2 No. 1 was marked for
3 identification.)
4 (Witness sworn.)
5 RADHA KRISHNA UPPUTURI, M.D.,
6 called as a witness herein, having been first duly
7 sworn, was examined and testified as follows:
8 EXAMINATION
9 BY
10 MR. KRAMER:
11 Q. Would you please state your name?
12 A. **Krishna Upputuri.**
13 Q. Are you a physician?
14 A. **Yes, I am.**
15 Q. What is the name of your medical practice
16 group?
17 A. **It's Northwestern Medicine Regional Medical**
18 **Group.**
19 Q. And what is its business address?
20 A. **I know the office address which is 1800**
21 **North Main Street in Wheaton.**
22 Q. That will work.
23 Doctor, do you understand that I'm Joe
24 Kramer, and I represent the plaintiff, Veronica

1 Q. Do you know the name of the Bard sling?
2 A. **I'm not sure, but I think it's Urotech.**
3 Q. I'm just going to go ahead and get this out
4 of the way upfront. So I'll mark this as Exhibit
5 No. 2.
6 (Whereupon, Upputuri Exhibit
7 No. 2 was marked for
8 identification.)
9 BY MR. KRAMER:
10 Q. Doctor, I'll turn your attention to Page 6
11 of that document. Do you recognize that?
12 A. **Yes. This is the operative note.**
13 Q. Okay. And then if you flip over to
14 Page 11, do you see where it says Implant Record?
15 A. **Yes.**
16 Q. And then do you see the sticker on that
17 page?
18 A. **Yes.**
19 Q. Does that refresh your recollection as to
20 which Bard product you used?
21 A. **Yes.**
22 Q. Okay. I'll ask it again. Do you recall
23 which product you used on Mrs. Madsen [REDACTED]
24 2016?

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1 Madsen, in this lawsuit?
2 A. **Yes.**
3 Q. Do you understand that we have not sued you
4 as part of this lawsuit?
5 A. **Yes.**
6 Q. You understand that -- well, I just want
7 you to know we don't intend to sue you as a part of
8 this lawsuit at any time. Okay?
9 A. **Okay.**
10 Q. And has any party at all intimidated to you
11 that you may become a party to this lawsuit?
12 A. **No.**
13 Q. Do you have an area of medical specialty?
14 A. **OB-GYN.**
15 Q. Did you provide medical treatment to
16 Mrs. Veronica Madsen?
17 A. **Yes, I did.**
18 Q. Did you implant a mesh sling into
19 Mrs. Madsen for stress urinary incontinence on
20 [REDACTED] 2016?
21 A. **Yes, I did.**
22 Q. Do you recall which specific product you
23 used?
24 A. **Oh, it's a Bard sling.**

1 A. **The transobturator system.**
2 Q. And does that transobturator system have a
3 particular name?
4 A. **I think Augment TO.**
5 Q. I believe that word there is Align.
6 A. **Align TO.**
7 Q. Okay. So just so I have a very clean
8 record --
9 A. **Sure.**
10 Q. Sometimes legal proceedings can be very
11 boring. Okay? Sorry for that. I appreciate your
12 patience.
13 Do you recall which product you used on
14 Mrs. Madsen [REDACTED] 2016?
15 A. **The Align TO.**
16 Q. And TO stands for what?
17 A. **Transobturator.**
18 Q. Who manufactures the Align TO?
19 A. **Bard.**
20 Q. Another thing that I want you to understand
21 about today is that we need your deposition to
22 essentially obtain the facts relating to your care
23 and treatment of Mrs. Madsen. It's the primary
24 purpose. Okay?

2 (Pages 5 to 8)

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Page 11

1 Have you ever been deposed before?

2 **A. Yes.**

3 Q. How many times?

4 **A. Twice.**

5 Q. Okay. Then I won't belabor the formal
6 rules of interacting during a deposition, but there
7 is one that I want to make clear on the record. If
8 I ask you a question and you answer it, it will be
9 assumed that you understood the question. Okay?

10 **A. Yes.**

11 Q. And the corollary of that is true as well.
12 If at any time I ask you a question that you don't
13 understand, because I ask a lot of bad questions,
14 feel free to ask me to clarify, rephrase, or explain
15 my question to you. Okay?

16 **A. Sure.**

17 Q. So you said you have been deposed twice
18 before?

19 **A. Um-hum.**

20 MR. VEZINO: Is that a yes?

21 THE WITNESS: Yes.

22 BY MR. KRAMER:

23 Q. In either of those circumstances, did your
24 testimony relate to a pelvic mesh product?

1 Q. I saw you thumbing through the records as
2 you walked in today.

3 Had you looked at them before that moment
4 in time to prepare for your deposition?

5 **A. Yes.**

6 Q. And, now, I don't want to know anything --
7 any of the content of any conversations between you
8 and your lawyer if those, in fact, took place.
9 Okay?

10 **A. Yes.**

11 Q. Did you meet with your attorney to prepare
12 for your deposition today?

13 **A. No.**

14 Q. All right. You are represented by counsel
15 today?

16 **A. Yes.**

17 Q. What is your counsel's name?

18 **A. Patrick Vezino.**

19 Q. You said that you have a CV, but you forgot
20 to bring it; isn't that right?

21 **A. Yes.**

22 Q. Is the CV that you have on file up to date?

23 **A. Yes.**

24 Q. Are there any lectures that you plan to

Page 10

Page 12

1 **A. No.**

2 Q. So you've never testified as a pelvic mesh
3 implanting surgeon?

4 **A. No.**

5 Q. You've never testified as a pelvic mesh
6 explanting surgeon?

7 **A. What is explanting?**

8 Q. Like excising or --

9 **A. No.**

10 Q. -- removing.

11 Have you ever testified live at trial?

12 **A. No.**

13 Q. Have you ever been retained as an expert
14 witness?

15 **A. No.**

16 Q. Did you bring any materials with you here
17 today?

18 **A. No, I did not.**

19 Q. Did you review any documents to prepare for
20 your deposition today?

21 **A. Just the medical records.**

22 Q. Which medical records specifically?

23 **A. The patient Veronica Madsen's office
24 visits, operative report, and the postop visit.**

1 give that will eventually be incorporated into your
2 CV?

3 **A. No.**

4 Q. Are there any drafts of publications that
5 you may incorporate at some point in time into your
6 CV?

7 **A. No.**

8 Q. Is there any research that you're doing
9 that has not yet reached the journal-drafting stage
10 that may at some point be incorporated into your CV?

11 **A. No.**

12 Q. We are going to ask that you produce a copy
13 of your CV to your attorney, Mr. Vezino. Okay?

14 **A. Okay.**

15 Q. So let's go ahead and take a look at what
16 was previously marked as Exhibit No. 1. You said
17 you had some time to look through that.

18 Does it appear to be a complete set of your
19 medical office chart relating to your treatment of
20 Mrs. Madsen?

21 **A. Yes.**

22 Q. Does it appear to be an accurate copy of
23 your office medical chart for the care and treatment
24 of Mrs. Madsen?

3 (Pages 9 to 12)

1 **A. Yes, except I made a phone call to her and**
2 **I didn't see the contents of the phone call here.**

3 Q. Is that something that you are certain you
4 noted in your medical chart?

5 **A. I'm not sure either, sir.**

6 Q. Are the medical records in Exhibit No. 1
7 records that would be generated regularly by your
8 medical practice in the normal course of its
9 operation while treating patients?

10 **A. I'm sorry. Could you rephrase that**
11 **question?**

12 Q. Yeah. So while you're treating patients in
13 the normal course of your medical practice, do you
14 generate medical records like those in Exhibit
15 No. 1?

16 **A. Yes.**

17 Q. And have you personally authored many of
18 the records within Exhibit No. 1?

19 **A. Yes.**

20 Q. So is it fair to say that you know how
21 medical records of the type in Exhibit No. 1 are
22 created in the normal course of your medical
23 office's operation?

24 **A. Yes.**

1 Q. And would all the medical records listed in
2 Exhibit No. 1 have been generated near in time to
3 when you saw Mrs. Madsen?

4 **A. Yes.**

5 Q. Doctor, do you have an independent
6 recollection of Mrs. Madsen?

7 **A. Yes.**

8 Q. Do you have an independent recollection of
9 the conversations that you had with her?

10 **A. Yes.**

11 Q. Okay. So you're not just relying on the
12 medical records to provide you with the most
13 accurate details of any conversations you would have
14 had with Mrs. Madsen? Is that accurate?

15 MR. KEDZIORA: Objection. Form.

16 THE WITNESS: I'm sorry.

17 MR. VEZINO: You can answer the question if
18 you understand it.

19 BY MR. KRAMER:

20 Q. It was a poorly worded question. I can
21 reask it.

22 Because you do have an independent
23 recollection of conversations that you have had with
24 Mrs. Madsen, will you be relying only on your

1 medical records to provide the most accurate details
2 of conversations that you had with Mrs. Madsen?

3 **A. No.**

4 Q. Do you recall the first date that you saw
5 Mrs. Madsen for treatment in your office?

6 **A. Yes.**

7 Q. What was that date?

8 **A. I believe it was [REDACTED] 2015.**

9 Q. Do you recall how Mrs. Madsen first came to
10 see you?

11 **A. With heavy menstrual cycles and urinary**
12 **incontinence and prolapse.**

13 Q. Well, my question was a little different.
14 You answered the question why did she come to see
15 you, and I guess I was looking for information as to
16 was she referred to you by someone you know? Or do
17 you have any recollection as to how Mrs. Madsen came
18 to see you?

19 **A. My -- the record here states that "Referred**
20 **here for incontinence, prolapse and heavy periods."**

21 Q. And do you remember the name of the doctor
22 that referred her to you?

23 **A. No, I don't.**

24 Q. Do you recall the last time you provided

1 any medical care to Mrs. Madsen?

2 **A. No.**

3 Q. Would that be reflected in your office
4 chart?

5 **A. Yes.**

6 Q. So go ahead and take a minute to ascertain
7 that date, and let me know when you have it. I'll
8 reask the question. Actually could we go off the
9 record for a second?

10 (Discussion off the record.)

11 BY MR. KRAMER:

12 Q. Doctor, do you recall the last time you
13 provided any medical care to Mrs. Madsen?

14 **A. Yes.**

15 Q. And what was that date?

16 **A. [REDACTED] 2016.**

17 Q. So you saw Mrs. Madsen between [REDACTED]
18 2016, and [REDACTED] 2016; is that right?

19 **A. Yes.**

20 Q. Is it fair to say that you treated
21 Mrs. Madsen for a very specific issue?

22 **A. Yes.**

23 Q. Now, let's go into that first office visit
24 on Page 1 of your medical chart.

1 You said that you saw Mrs. Madsen on
 2 [REDACTED] 2015, for the first time.
 3 Does that mean that you personally saw her
 4 on that date?
 5 **A. Yes.**
 6 Q. How old was Mrs. Madsen at that visit?
 7 **A. 48.**
 8 Q. What were her chief complaints that caused
 9 her to seek your treatment?
 10 **A. Heavy periods, vaginal bleeding, and**
 11 **fibroids.**
 12 Q. Did she have any urinary symptoms?
 13 **A. And urinary incontinence.**
 14 Q. What is urinary incontinence?
 15 **A. Involuntary loss of urine.**
 16 Q. Are there different types of urinary
 17 incontinence in women?
 18 **A. Yes.**
 19 Q. What are those types?
 20 **A. Broadly categorizing, stress, overflow, or**
 21 **urge.**
 22 Q. What kind of incontinence was Mrs. Madsen
 23 complaining of at this initial [REDACTED] 2015,
 24 visit?

1 **A. Stress urinary incontinence.**
 2 Q. What specifically is stress urinary
 3 incontinence?
 4 **A. Leakage of urine on exertion, coughing,**
 5 **sneezing.**
 6 Q. Did Mrs. Madsen report any urgency-type
 7 incontinence?
 8 **A. No, she did not.**
 9 Q. Did Mrs. Madsen report any type of
 10 incontinence other than stress urinary incontinence
 11 on [REDACTED] 2015?
 12 **A. No.**
 13 Q. You said that she also presented with
 14 fibroids?
 15 **A. Yes.**
 16 Q. What are fibroids?
 17 **A. Fibroids are benign, smooth muscle --**
 18 **uterine smooth muscle growths in the uterus.**
 19 Q. You also mentioned that Mrs. Madsen had
 20 vaginal bleeding.
 21 Did she describe the severity of her
 22 vaginal bleeding for you at this initial visit?
 23 **A. Yes.**
 24 Q. And what did she say?

1 **A. She's been having irregular menses every 15**
 2 **days with moderate pain during -- during the**
 3 **menstrual cycle.**
 4 Q. Did you conduct a vaginal pelvic
 5 examination of Mrs. Madsen on [REDACTED] 2015?
 6 **A. Yes.**
 7 Q. What were your findings?
 8 **A. Normal external genitalia, normal vulva,**
 9 **vagina, cervix, uterus, and adnexa. Normal size**
 10 **uterus. Nontender.**
 11 Q. So to summarize, would you say it's fair to
 12 categorize the vaginal pelvic examination of
 13 Mrs. Madsen at this initial visit as normal?
 14 **A. Yes.**
 15 Q. Did you find any sign of pelvic organ
 16 prolapse that you noted in the record here?
 17 **A. No, not on that visit.**
 18 Q. What was your clinical assessment of
 19 Mrs. Madsen at this initial visit?
 20 **A. Abnormal uterine bleeding, pelvic pressure**
 21 **unspecified urinary incontinence, uterine polyps,**
 22 **slash, fibroid.**
 23 Q. I also noted that you listed pregnancy as
 24 part of your assessment of her. I didn't see that

1 anywhere else in the medical record. Is this
 2 possible this was a false positive?
 3 MR. KEDZIORA: Objection. Calls for
 4 speculation.
 5 THE WITNESS: It's a pregnancy status
 6 unknown. I think we do a pregnancy test.
 7 That's the reason for the diagnosis -- unknown
 8 tests, you have to link the test to a
 9 diagnosis.
 10 BY MR. KRAMER:
 11 Q. All right. I was very confused by that.
 12 Thanks for clearing it up.
 13 **A. Yes.**
 14 Q. So in your assessment of the patient,
 15 Mrs. Madsen, you found uterine polyp or fibroid.
 16 Did you take a biopsy of it?
 17 **A. I did an endometrial biopsy.**
 18 Q. And if you want to reference the pathology
 19 report, it's on Page 25. Okay?
 20 MR. KEDZIORA: Counsel, which page are you
 21 referring the doctor to?
 22 MR. KRAMER: 25.
 23 BY MR. KRAMER:
 24 Q. Did you detect -- strike that.

Page 21

1 Did you detect anything on the biopsy
2 removed from Mrs. Madsen at this initial visit?

3 **A. No. Normal peripheral endometrium.**

4 Q. What is the endometrium?

5 **A. Endometrium is the lining of the uterus.**

6 Q. What else did you do to treat Mrs. Madsen's
7 symptoms on [REDACTED] 2015?

8 **A. I didn't treat her symptoms on this visit.**

9 Q. I see a list of orders there.

10 **A. Yeah, just sent out a urine culture**
11 **specimen to pathology, and these are the medications**
12 **she was already on.**

13 Q. And what are those medications?

14 **A. I believe it's Vitamin C, slash, E and**
15 **Zyrtec.**

16 Q. What is Zyrtec?

17 **A. It's an antihistamine medication.**

18 Q. So if we go over to Page 4 at the bottom,
19 did you personally see Mrs. Madsen on [REDACTED]
20 2015?

21 **A. Yes.**

22 Q. What was the purpose for Mrs. Madsen's
23 visit to your office on that day?

24 **A. She is following up on her abnormal**

Page 22

1 **bleeding and urine incontinence.**

2 Q. So were those the two primary reasons why
3 you treated Mrs. Madsen --

4 **A. Yes.**

5 Q. -- during the time you saw her?

6 **A. Yes.**

7 Q. Did you conduct a vaginal pelvic exam at
8 this visit?

9 **A. Yes.**

10 Q. Were there any notable findings?

11 **A. Yes.**

12 Q. What were they?

13 **A. She had a cystocele, first degree, and a**
14 **uterine prolapse, first degree.**

15 Q. What does it say there at the end?

16 **A. Urethral hypermobility.**

17 Q. What is cystocele of the first degree?

18 **A. It's a mild prolapse of the bladder.**

19 Q. When you say "a mild prolapse of the
20 bladder," do you mean that the bladder sort of
21 protrudes into, falls into the vagina a little?

22 **A. Yes.**

23 Q. Can that cause urinary incontinence?

24 **A. Yes.**

Page 23

1 Q. You also detected uterine prolapse. What
2 is uterine prolapse?

3 **A. The uterus drops into the vaginal vault.**

4 Q. Can that cause incontinence?

5 **A. Not by itself per se.**

6 Q. And what is urethral hypermobility, the
7 last thing you noted there?

8 **A. It's the weak -- it's the weak -- when the**
9 **patient coughs, you notice that the urethra is**
10 **deflecting more than a 30-degree angle.**

11 Q. The urethra is where the urine comes out of
12 the bladder?

13 **A. It's the opening of the bladder.**

14 Q. And so can urethral hypermobility cause
15 incontinence?

16 **A. Yes.**

17 Q. Did you conduct any tests at this
18 [REDACTED] 2015, visit to explore the nature of
19 Mrs. Madsen's incontinence?

20 **A. Yes.**

21 Q. What test did you conduct?

22 **A. I did a -- evaluated the bladder, total**
23 **bladder capacity, and demonstrated leakage on**
24 **coughing and Valsalva, which is exertion.**

Page 24

1 Q. So is that an objective test conducted to
2 confirm stress urinary incontinence?

3 **A. Yes.**

4 Q. Did Mrs. Madsen have any postvoid residual
5 urine after the test?

6 **A. She did. Less than five cc's.**

7 Q. Is that a normal amount of --

8 **A. That's a normal amount.**

9 Q. And is postvoid residual the amount of
10 urine that remains in the bladder after someone
11 urinates?

12 **A. Yes.**

13 Q. At this visit, did you discuss any
14 treatment option with Mrs. Madsen for her urinary
15 incontinence?

16 **A. Yes.**

17 Q. What treatment did you discuss with her?

18 **A. We discussed a hysterectomy, a laparoscopic**
19 **hysterectomy versus hysteroscopic polypectomy and**
20 **uterine ablation.**

21 Q. And was that for the uterine prolapse
22 problem that she was having?

23 **A. Yes.**

24 Q. Okay. And so my question was a little bit

6 (Pages 21 to 24)

1 different.

2 Did you discuss any treatment options with
3 her for her stress urinary incontinence?

4 **A. Yes.**

5 Q. And what treatment options did you discuss
6 with her for her stress urinary incontinence?

7 **A. Mid-urethral sling.**

8 Q. Is that the Bard Align Transobturator that
9 we discussed earlier?

10 **A. Yes.**

11 Q. And you say here in your note that you,
12 quote, discussed risks, benefits, fail rates, and
13 FDA warnings. Did I read that right?

14 **A. Yes.**

15 Q. Then you go on to say that you, quote,
16 spent 30 minutes showing videos of the sling
17 procedure and explaining the risks to Mrs. Madsen.
18 Did I read that right?

19 **A. Yes.**

20 Q. Okay. Would you call that annotation of an
21 informed content conversation that you had with
22 Mrs. Madsen?

23 **A. Yes.**

24 Q. And are doctors required to have informed

1 related to a particular proposed surgical procedure?

2 **A. Yes.**

3 Q. Doctor, are you aware that, as part of this
4 lawsuit, the plaintiff is alleging that the
5 Defendant Bard had information related to risks
6 relating to its Align TO product that it did not
7 pass along to the medical community and doctors like
8 yourself?

9 **A. I'm sorry. Could you repeat that question?**

10 Q. Yeah. Are you aware that the plaintiff, as
11 part of this lawsuit, is alleging that the
12 defendant, C.R. Bard, had information relating to
13 risks of the Align TO device that it did not provide
14 to the medical community including doctors like
15 yourself?

16 **A. Not aware.**

17 Q. Doctor, would you agree that information
18 you pass along to the patient about risks of a
19 planned surgical procedure like the Align TO can
20 come from a variety of sources?

21 **A. Yes.**

22 Q. And one of those sources is from the
23 medical device manufacturer itself, correct?

24 **A. Yes.**

1 consent conversations with patients before
2 undergoing a contemplated surgical procedure?

3 **A. Yes.**

4 Q. Can you briefly describe the meaning of the
5 phrase "informed consent"?

6 **A. Making a patient aware of the risks of the
7 procedure involved, the benefits of the procedure,
8 and the complications.**

9 Q. Okay. And so now I want to unpack that a
10 little bit.

11 **A. Sure.**

12 Q. As part of an informed consent
13 conversation, you discuss the benefits of a proposed
14 surgical procedure, right?

15 **A. Yes.**

16 Q. And as a part of the informed consent
17 conversation, another important aspect is that you
18 discuss potential risks of a proposed surgery as
19 well, right?

20 **A. Yes.**

21 MR. KEDZIORA: Objection. Form.
22 BY MR. KEDZIORA:

23 Q. Is it your habit to inform the patient of
24 all the significant risks that you know about

1 Q. And are you familiar with the term
2 Instructions For Use?

3 **A. Instructions?**

4 Q. Instructions For Use.

5 **A. Yes.**

6 Q. Okay. And so are you aware that the
7 Instructions For Use include within it a set of
8 adverse events, potential risks, complications,
9 things like that?

10 **A. Yes.**

11 Q. And so it's fair to say that medical device
12 manufacturers like C.R. Bard can communicate risks
13 relating to its device to the medical community via
14 its Instructions For Use document, correct?

15 MR. KEDZIORA: Objection. Form.

16 THE WITNESS: Yes.

17 BY MR. KRAMER:

18 Q. Is it your habit to at some point before
19 using a medical device read the Instructions For
20 Use?

21 **A. Not every time.**

22 Q. I'm not asking you if you read them every
23 time you use the device. My question was a little
24 different.

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1 So is it your habit to read the
2 Instructions For Use for a particular medical device
3 at some point before using it?

4 **A. Yes.**

5 Q. Let me go ahead and mark a copy of the
6 Align TO IFU that defendants have represented to us
7 was in place at the time of Mrs. Madsen's surgery as
8 Exhibit No. 3.

9 MR. KEDZIORA: I apologize. I just want to
10 state an objection. I'm not sure if this was
11 produced to us pursuant to the PTO48 which
12 requires the plaintiff's counsel to provide
13 exhibits to defense counsel at least 48 hours
14 before the deposition. So I am going to state
15 an objection. I'm going to object to any line
16 of questioning relating to any documents that
17 have not been provided to us.

18 MR. KRAMER: I'm going to respond to that
19 by saying there's no prejudice since this
20 document was released to the public domain, and
21 I'm going to continue with my questions.

22 (Whereupon, Upputuri Exhibit
23 No. 3 was marked for
24 identification.)

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1 MR. KEDZIORA: I just want to say that I
2 disagree that there was no prejudice, but, of
3 course, counsel can proceed with the
4 deposition.

5 BY MR. KRAMER:

6 Q. So, Doctor, does this look similar to the
7 Instructions For Use for the Align TO that you would
8 have seen at some point in time?

9 **A. Approximately, yes.**

10 Q. Okay. And if we go over to Page 5 of the
11 document, do you see the Adverse Events section?

12 **A. Um-hum.**

13 MR. VEZINO: Yes?

14 THE WITNESS: Yes.

15 BY MR. KRAMER:

16 Q. And would you agree that within that
17 Adverse Events section, the manufacturer, C.R. Bard,
18 has listed risks relating to the implantation of the
19 Align TO device?

20 **A. Yes.**

21 Q. So now I'm going to ask you to take a
22 minute to look over those and draw upon your memory
23 because I would like to ask you for a list of the
24 risks that you would have provided to Mrs. Madsen.

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1 Okay?

2 Let me know whenever you're ready for me to
3 ask you that question.

4 **A. Go ahead.**

5 Q. Okay. So what risks would you have told
6 Mrs. Madsen were related to the implantation of the
7 Align TO product?

8 MR. KEDZIORA: Objection. Form.

9 MR. KRAMER: What was wrong with the form?

10 MR. KEDZIORA: You're asking what were the
11 risks that the doctor would tell her about, or
12 are you asking about the specific risks that
13 are listed in this document? It's unclear.

14 BY MR. KRAMER:

15 Q. I'll stand on the question.

16 Do you want me to reask it?

17 **A. Yeah. Go ahead please.**

18 Q. What risks would you have told Mrs. Madsen
19 were related to implantation of the Align TO device
20 before implantation of it in her?

21 **A. All these and a few more.**

22 Q. Okay. What were the others, if you can
23 remember? It's important that we get them down.

24 **A. Groin pain.**

Page 32

1 Q. What do you mean by growing pain? Oh,
2 groin pain?

3 **A. Groin pain.**

4 Q. Okay. Any others?

5 **A. Dyspareunia and infections.**

6 Q. When you say "infections," what do you
7 mean?

8 **A. Any time you implant a foreign body,
9 there's always a risk of infection.**

10 Q. So, again, I want to make sure that we've
11 discussed all of the risks that you would have
12 provided to Mrs. Madsen prior to implantation of the
13 Align TO.

14 Are you sure that we've discussed all of
15 those risks?

16 **A. I think most of it, to the best of my
17 memory.**

18 Q. Okay. Is there anything else that's coming
19 to mind right now that you would like to add to our
20 list that we've made?

21 **A. No.**

22 Q. Okay. And, Doctor, I want to ask you to
23 verify a few things for me.

24 In any of the risks listed here on Page 5

8 (Pages 29 to 32)

1 of the Align TO IFU within the Adverse Events
2 section, is there any risk rate information observed
3 in the medical literature that relate to each of the
4 specific risks listed?

5 **A. Yes.**

6 Q. There is?

7 **A. Approximate risks.**

8 Q. What is approximate risks?

9 **A. I think bladder perforation. There's a**
10 **number --**

11 Q. I think we are misunderstanding one
12 another.

13 So within the Adverse Events section of the
14 Align TO IFU, does C.R. Bard list any of the rates
15 that have been observed in the medical literature
16 for any of the risks listed within that section?

17 **A. No.**

18 Q. And, similarly, within the Adverse Events
19 section, is there any specific language used to
20 denote the possible duration of any of the risks
21 that are listed there?

22 **A. No.**

23 Q. Doctor, are the rates at which particular
24 risks have been observed to occur in the medical

1 literature important to an informed consent
2 conversation?

3 **A. Yes.**

4 Q. And are the rates at which particular risks
5 occur in the medical literature important to your
6 decision of whether or not to even use a particular
7 product?

8 **A. Yes.**

9 Q. If Bard had included risk rates for any of
10 the risks listed in the Adverse Events section of
11 the Align TO IFU, would you have passed that
12 information along to Mrs. Madsen?

13 **A. Yes.**

14 Q. And what do you consider an acceptable rate
15 of risk -- strike that.

16 What do you consider an acceptable risk
17 rate of a particular complication for a particular
18 medical device that you would be willing to use?

19 **A. Less than two to three percent.**

20 Q. Okay. So now, if Bard had included within
21 this Adverse Events section any risk rates above
22 three percent for any of the risks listed here,
23 would that have impacted your decision to use the
24 Align TO device?

1 **A. Yes.**

2 Q. Doctor, did you know that a director of
3 research and development at Bard in September of
4 2008 concluded the mesh products that were designed
5 as of that September 2008 date were overengineered
6 with regard to strength for their biologic
7 requirement?

8 MR. KEDZIORA: Objection. Form.

9 THE WITNESS: No.

10 BY MR. KRAMER:

11 Q. So no representative of Bard ever told you
12 that their director of research and development felt
13 the mesh products on the market at the time were
14 overengineered with regard to strength for the
15 biologic requirement?

16 **A. No.**

17 Q. Did anyone from -- strike that.

18 Would you have liked to have known that a
19 director of research and development at Bard was
20 stating that the mesh products on the market were
21 overengineered with regard to strength for their
22 biologic requirement?

23 **A. Yes.**

24 Q. Would that have impacted your decision to

1 use the Bard device?

2 **A. Yes.**

3 Q. Doctor, did anyone from Bard ever tell you
4 that the director of research and development in
5 September of 2008 concluded the pore size of mesh on
6 the market resulted in a formation of a scar plate
7 that was rigid and does not integrate well over time
8 with the host tissue?

9 MR. KEDZIORA: Counsel, before we proceed,
10 I'm just going to state an objection. Again, I
11 believe you're referring to corporate documents
12 that have not been marked as an exhibit, but
13 the PTO required -- PTO48 required the
14 plaintiff's counsel to provide any corporate
15 documents that will be used at the depositions
16 to defense counsel at least 48 hours before the
17 deposition. They have not been produced so,
18 again, I'm objecting to any line of questioning
19 about those documents.

20 And can we agree that I have a standing
21 objection relating to any questions that you
22 may have that relate to corporate documents
23 that have not been provided to us?

24 MR. KRAMER: We can agree to your standing

objection.

Your objection is noted for the record.

I would also like for the record to reflect that I'm not showing anyone the documents that I am referencing.

What was the last question that I asked please?

(Record read as requested.)

THE WITNESS: No.

BY MR. KRAMER:

Q. Would you have liked to have known that in September of 2008 a director of research and development at Bard concluded that the pore size of mesh on the market resulted in the formation of a scar plate that's rigid and does not integrate well over time with the host tissues?

A. Yes.

Q. Would that information have impacted your decision to use the Bard Align TO?

A. Yes.

Q. Did anyone at Bard ever tell you that a director of research and development at Bard September of 2008 concluded that the design of a more light-weight open-pore mesh was needed?

A. No.

Q. If someone from Bard had told you that the polypropylene in the Align TO was specifically not to be used in medical applications involving permanent implantation in the human body, would that have impacted your decision to use the device?

A. Yes.

Q. And if we go back to the Align TO IFU on Page 5, Dr. Upputuri, does it say anywhere within the Adverse Events section that the Bard Align TO product creates a scar plate that is rigid, preventing the product from integrating well over time with the host tissue?

A. No.

Q. If that information had been included in the Bard Align TO IFU, is that information you would have passed along to Mrs. Madsen?

A. Yes.

Q. Doctor, same question, Page 5, within the Adverse Events section of the Bard Align TO IFU is mesh shrinkage of 30 percent to 50 percent postimplantation directly resulting in scar plate formation listed within that Adverse Events section?

A. No.

A. No.

Q. And if someone at Bard had told you that a director of research and development at Bard in September of 2008 concluded that the company needed to design a more light-weight open core mesh than what was currently on the market, would that have impacted your decision to use the Align TO product?

A. Yes.

Q. Did anyone from Bard ever tell that a director of research and development at Bard in September of 2008 concluded that the shrinkage rate for mesh postimplantation is between 30 and 50 percent?

A. No.

Q. And if someone at Bard had told you that the shrinkage rate for mesh on the market was between 30 and 50 percent, would that have impacted your decision to use the Bard Align TO?

A. Yes.

Q. Doctor, did anyone from Bard prior to your implantation of the Align TO in Mrs. Madsen ever tell you that the polypropylene used in the device was specifically not for use in medical applications involving permanent implantation in the human body?

Q. If that information had been included in the Adverse Events section, would you have passed that along to Mrs. Madsen?

A. Yes.

Q. Does it indicate anywhere within the IFU, period, that the polypropylene used to create the Align TO product was not indicated for permanent human implantation?

A. No.

Q. And if that information had been included somewhere in the IFU for the Align TO, would you have passed that information along to Mrs. Madsen?

A. Yes.

Q. Okay. How about we return to your medical treatment of Mrs. Madsen.

A. Sure.

Q. Go over to Page 11. And, Doctor, given the information that was available on the market at the time, were you able to eventually obtain Mrs. Madsen's consent to perform surgery on her?

A. Yes.

Q. What surgical procedure specifically did you conduct on Mrs. Madsen?

A. Transobturator mid-urethral sling.

Page 41

1 Q. And that was with the Align TO product?

2 A. Yes.

3 Q. What was the date of the implantation
4 surgery?

5 A. [REDACTED] 2016.

6 Q. On [REDACTED] 2016, did you perform that
7 Align TO implantation as you were trained to perform
8 it?

9 A. Yes.

10 Q. Did Bard train you how to perform the Align
11 TO implant?

12 A. No.

13 Q. Did you learn how to implant the Bard Align
14 TO as part of your medical residency?

15 A. Yes.

16 Q. Did the implantation of the Bard Align TO
17 go as planned?

18 A. Yes.

19 Q. Were there any complications during the
20 Bard Align TO implantation surgery you performed on
21 Mrs. Madsen [REDACTED] 2016?

22 A. No complications.

23 Q. Go over to the next page. Do you see the
24 follow-up note at the bottom? Do you see it?

Page 43

1 **small, dime-size clots, dark clots, no bright-red**
2 **bleeding.**

3 Q. Did you conduct a vaginal pelvic exam on
4 that day?

5 A. Yes.

6 Q. And what were your findings?

7 **A. The suburethral area was intact with no**
8 **bleeding. It was clean and dry. Trace blood noted**
9 **at the cervical opening but no active bleeding.**

10 Q. Given --

11 A. No.

12 Q. I'm sorry.

13 **A. No bleeding on Valsalva or coughing.**

14 Q. Given that Mrs. Madsen just had a
15 hysterectomy -- I'm sorry. Strike that.

16 Given that Mrs. Madsen just had vaginal
17 surgery, did your pelvic examination reveal anything
18 unusual?

19 A. No.

20 Q. What was your plan for the treatment of
21 Mrs. Madsen on this [REDACTED] 2016, visit date?

22 **A. To ambulate throughout the course of the**
23 **day, and if there's no bleeding, we'll discharge the**
24 **patient home.**

Page 42

1 A. Yes.

2 Q. Doctor, did you see Mrs. Madsen on
3 [REDACTED] 2016, the next day after her surgery?

4 A. Yes.

5 Q. Did she report any vaginal bleeding on that
6 day?

7 A. Pink discharge.

8 Q. I'm sorry. Where are you on the document?

9 A. On Page 13.

10 Q. Oh.

11 A. At the bottom.

12 Q. If we go back to Page 12, do you see the
13 subjective?

14 A. Page 12?

15 Q. Because I was asking specifically what she
16 reported.

17 So let's go back, and I'll reask the
18 question. Okay?

19 Doctor, did Mrs. Madsen report any vaginal
20 bleeding on [REDACTED] 2016, the day after her
21 surgery?

22 A. Yes.

23 Q. How did she describe it?

24 A. Two episodes of vaginal bleeding with

Page 44

1 Q. Did you see Mrs. Madsen again
2 postoperatively?

3 A. Yes.

4 Q. What day did you next see Mrs. Madsen?

5 A. [REDACTED] 2016.

6 Q. Now, the record on Page 13 that we are
7 looking at says [REDACTED] 2016. But if you go
8 over to Page 13 -- I'm sorry. If you go over to --
9 if you go over to Page 17, you reference a visit of
10 [REDACTED] 2016. Do you see that?

11 A. Page 17. Yes.

12 Q. And it looks like this office visit on
13 Page 17 happened [REDACTED] 2016, right?

14 A. Yes.

15 Q. And so if we go back now to Page 13, do you
16 think that, although the record signed on Page 13
17 was signed [REDACTED] 2016, it was actually
18 generated from a [REDACTED] 2016, office visit?

19 A. Yes. It's possible.

20 Q. Okay. Do you want to take a minute to
21 refresh these records side by side, and maybe it
22 will refresh your recollection. I just want the
23 record to be clear.

24 A. Yes.

11 (Pages 41 to 44)

1 Q. Okay.

2 A. **So the first encounter was on [REDACTED]**

3 Q. Okay. Great. So I'll go back to the top.

4 When was the first time you saw Mrs. Madsen
5 after your [REDACTED] [REDACTED] 2016, visit
6 postoperatively?

7 A. [REDACTED] [REDACTED] 2016.

8 Q. Did you conduct a postoperative exam of
9 Mrs. Madsen in your office on that date?

10 A. Yes.

11 Q. And did Mrs. Madsen have any specific
12 complaints when she presented to you on
13 [REDACTED] [REDACTED] 2016?

14 A. Yes. **Lightheadedness, dizziness, shaky,
15 heart palpitations, fever, urinary urgency, pressure
16 in the ear, and vaginal discharge with odor.**

17 Q. Okay. So the lightheadedness, dizziness,
18 shakiness, heart palpitations, fever, urinary
19 urgency, pressure in the ear with little hearing, I
20 want to talk about those. Okay?

21 A. Sure.

22 Q. Did you know that the hospital administered
23 Mrs. Madsen a flu shot before she was discharged?

24 A. Yes. **That's protocol.**

1 Q. Okay. Now, those symptoms, the
2 lightheadedness, dizziness, shaky, heart
3 palpitations, fever, urinary urgency, pressure in
4 the ear with little hearing.

5 MR. KEDZIORA: Objection. Compound.
6 BY MR. KRAMER:

7 Q. Those symptoms that I just described, are
8 those flu-like symptoms?

9 A. No.

10 Q. They aren't? What are those symptoms
11 related to, in your opinion, if you have an opinion?

12 A. **I was trying to rule out a pulmonary --
13 postop pulmonary embolus.**

14 Q. Did you conduct a pelvic exam of
15 Mrs. Madsen on [REDACTED] [REDACTED] 2016?

16 A. Yes.

17 Q. Strike that.

18 Did you do anything to specifically rule
19 out the pulmonary embolism that you were concerned
20 Mrs. Madsen may have experienced?

21 A. **I take it back. My working diagnosis on
22 [REDACTED] was postoperative shortness of breath,
23 nonspecific findings. I told her to continue iron
24 twice a day and give her shortness of breath**

1 **precautions.**

2 Q. When was the next time you saw Mrs. Madsen
3 after this [REDACTED] [REDACTED] 2016, visit?

4 A. **That's on [REDACTED] 2016.**

5 Q. Why did Mrs. Madsen return to your office
6 two days later?

7 A. **Still heart palpitations, shortness of
8 breath, light spotting, and two out of ten pain in
9 her groin.**

10 Q. The two out of ten pain in her groin, is
11 that unusual for the duration of time that had
12 passed since her mesh implant surgery?

13 A. No.

14 Q. And so given her symptoms that she
15 presented with on [REDACTED] [REDACTED] 2016, what was your
16 main concern?

17 A. **Pulmonary embolus was my main concern.**

18 Q. Did you do anything on [REDACTED] [REDACTED] 2016,
19 to specifically rule out a pulmonary embolism in
20 Mrs. Madsen?

21 A. **I sent her to the hospital for a stat CT of
22 the chest and also the pelvis.**

23 Q. Okay. And I've watched enough of the ER
24 television shows to know that stat means immediate,

1 right?

2 A. **Immediate.**

3 Q. Okay. So you sent her immediately for a CT
4 scan of her chest to see if there were any pulmonary
5 embolisms located there?

6 A. Yes.

7 Q. And if you go to Page 28, you'll have that
8 CT scan result for reference. Let me know when
9 you're there. Okay?

10 A. Yes.

11 Q. What did the stat CT scan of Mrs. Madsen on
12 [REDACTED] [REDACTED] 2016, reveal?

13 A. **Negative for pulmonary embolism or acute
14 cardiopulmonary process. Low density lesion about
15 2.7 by 2.6 milliliters. Possibly complicated cyst
16 or solid lesion. Moderate fluid distension of the
17 endometrial canal measuring 18 millimeters in
18 thickness.**

19 Q. And in layman's terms, does that CT scan
20 rule out that Mrs. Madsen had experienced a
21 pulmonary embolism?

22 A. Yes.

23 Q. And was there anything found in this
24 [REDACTED] [REDACTED] 2016, CT scan that helped you to

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1 explain the complaints Mrs. Madsen had?

2 **A. No.**

3 Q. And, as you sit here today, do you know if
4 her complaints ever resolved?

5 **A. No.**

6 Q. Okay. Were you aware that, in the near
7 term postoperatively, she went back to the emergency
8 room with the same complaint that she presented to
9 you?

10 **A. Yes. I think that's the phone call.**

11 Q. Do you think Mrs. Madsen experienced
12 anything in the postoperative period that would have
13 increased her risk for mesh complications?

14 MR. KEDZIORA: Objection. Form.

15 THE WITNESS: Can you repeat that question?
16 BY MR. KRAMER:

17 Q. Do you think that Mrs. Madsen experienced
18 anything in the postoperative period that would have
19 increased her risk for mesh complications?

20 MR. KEDZIORA: Same objections.

21 THE WITNESS: No.

22 BY MR. KRAMER:

23 Q. Did you see Mrs. Madsen after

24 [REDACTED] 2016?

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1 deposited twice before?

2 **A. Yes.**

3 Q. What was the nature of the cases in which
4 you were deposed?

5 **A. Case one was from a second year of
6 residency. I was a second assist and urethral
7 injury during a C-section.**

8 Q. When did you give that testimony that you
9 just talked about? You said it was during your
10 second year of --

11 **A. Residency.**

12 Q. So when was that?

13 **A. My second year of residency was in 2003,
14 and the deposition I believe was in 2007.**

15 Q. Were you a party to that case?

16 **A. I don't know what that means.**

17 Q. Were you being sued as a defendant?

18 **A. Initially, and then they dropped me.**

19 Q. And do you remember the plaintiff's name?

20 **A. No, I don't.**

21 Q. Do you have a copy of the deposition
22 transcript in your possession?

23 **A. No, I don't.**

24 Q. Okay. And how about the other case?

Page 50

1 **A. No, no.**

2 Q. Do you know how Mrs. Madsen's condition has
3 progressed after [REDACTED] 2016?

4 **A. No.**

5 MR. KRAMER: I'll yield the witness.

6 MR. KEDZIORA: Okay. Can we go off the
7 record for a second?

8 (Recess taken.)

9 EXAMINATION

10 BY

11 MR. KEDZIORA:

12 Q. Good morning, Doctor. My name is Martin
13 Kedziora. I'm an attorney with Greenberg Traurig,
14 and I represent C.R. Bard in this litigation.

15 Today was the first time that we've ever
16 met, correct?

17 **A. Yes.**

18 Q. Have you ever met any other attorneys for
19 Bard before today?

20 **A. No.**

21 Q. Have you ever consulted for C.R. Bard?

22 **A. No.**

23 Q. And counsel asked you before whether you
24 have been deposed, and you've said you have been

Page 52

1 **A. It was a case against the company that
2 makes Interceed adhesion barrier device.**

3 Q. I'm sorry. What is that?

4 **A. Adhesion barrier device. The patient had a
5 complication in a prior C-section, and I did the
6 repeat C-section. They deposed me to discuss my
7 intraoperative findings.**

8 Q. And when did you give that testimony in
9 that case?

10 **A. I think 2012 or 2013.**

11 Q. And were you being sued or named as a
12 defendant in that case?

13 **A. No.**

14 Q. And do you have a copy of the deposition
15 transcript?

16 **A. No, I don't.**

17 Q. So you were just a fact witness in both of
18 these cases?

19 **A. Yes.**

20 Q. You were not an expert?

21 **A. No.**

22 Q. You're here today simply in your capacity
23 as a treating physician; is that correct?

24 **A. Yes.**

13 (Pages 49 to 52)

EXAMINATION BY MR. KEDZIORA

Page 53

1 Q. You're not an expert?
 2 A. No.
 3 Q. You're here as a fact witness who provided
 4 care and treatment to Mrs. Madsen in this case,
 5 correct?
 6 A. Yes.
 7 Q. Do you consider yourself as an expert
 8 witness for any party in this case?
 9 A. No.
 10 Q. Have you been asked by any party to serve
 11 as an expert witness in this case?
 12 A. No.
 13 Q. Did you speak with anyone about this
 14 deposition before today?
 15 A. Yes.
 16 Q. Who did you speak to?
 17 A. Patrick Vezino.
 18 Q. Other than your attorney, have you spoke to
 19 anyone else about this deposition prior to today?
 20 A. Yes.
 21 Q. Who else did you speak to?
 22 A. Practice manager.
 23 Q. And what is the practice manager's name?
 24 A. Theresa Belmonte.

Page 54

1 Q. And is she part of your practice?
 2 A. Yes.
 3 Q. And what did you discuss with Theresa?
 4 A. The logistics of scheduling the...
 5 Q. Did you have any substantive conversations
 6 with her about the deposition?
 7 A. Not --
 8 MR. VEZINO: In terms of the subject
 9 matter?
 10 BY MR. KEDZIORA:
 11 Q. Subject matter.
 12 A. I think briefly.
 13 Q. Okay. If you can tell me generally what
 14 was the nature of the discussion?
 15 A. I think she said that Dr. Kegan also was
 16 involved.
 17 Q. I'm sorry. Dr. who?
 18 A. Kegan.
 19 Q. And who is Dr. Kegan?
 20 A. Dr. Kegan is urogynecologist at Prentice.
 21 Q. And what's your understanding as to how is
 22 Dr. Kegan involved in this matter?
 23 A. That the patient followed up with Dr. Kegan
 24 for more treatment.

Page 55

1 Q. Is it possible that you're referring to
 2 Dr. Kenton?
 3 A. You're right, Dr. Kenton. I apologize.
 4 Q. That's fine. I just want to make sure we
 5 are on the same page. So it was Dr. Kenton that you
 6 just referred to?
 7 A. Yes.
 8 Q. So what else -- strike that.
 9 Have you discussed anything else with --
 10 with your practice manager?
 11 A. No. I was wondering if -- if -- I was just
 12 curious as to what -- what treatment she got because
 13 I was under the impression that everything went well
 14 because patient never followed up. And I was
 15 surprised to hear that she needed more treatment.
 16 Q. So that's something that you've learned
 17 from your practice manager?
 18 A. Yes.
 19 Q. Did she show you any records at all?
 20 A. No.
 21 Q. Other than your records?
 22 A. No.
 23 Q. So you haven't seen any records from
 24 Dr. Kenton?

Page 56

1 A. She said that there was something scanned
 2 in, but I'm not sure if I looked at it or not. I
 3 can't recall.
 4 Maybe I might have looked at a one-page --
 5 our systems are not linked. I don't know how we got
 6 it. So we are talking about how eventually we
 7 should be able to see when all the systems are
 8 integrated.
 9 Q. Have you received any payment from the
 10 plaintiff's counsel or counsel's office in
 11 connection with this case?
 12 A. Yes.
 13 Q. And what payment did you receive?
 14 A. Two checks. A \$40 check for medical
 15 records and a \$2400 check today.
 16 Q. And that check was for your time sitting at
 17 the deposition today?
 18 A. Yes.
 19 Q. Did you receive any other payment -- strike
 20 that.
 21 What were you asked to do in exchange for
 22 the payment that you received from plaintiff's
 23 counsel's office?
 24 A. Just spend time for deposition.

14 (Pages 53 to 56)

EXAMINATION BY MR. KEDZIORA

Page 57

Page 59

1 Q. That's it?

2 A. **That's it.**

3 Q. I'm going to mark the Cross Notice of
4 Deposition of Dr. Upputuri as Exhibit -- what number
5 are we?

6 THE REPORTER: 4.

7 BY MR. KEDZIORA:

8 Q. As Exhibit 4.

9 (Whereupon, Upputuri Exhibit

10 No. 4 was marked for

11 identification.)

12 BY MR. KEDZIORA:

13 Q. Doctor, have you seen this Cross Notice of
14 Deposition before today?

15 A. **Yes.**

16 Q. And there is a rider. We call it a rider,
17 but it's an Exhibit A, which lists certain
18 categories of documents that we ask you to bring to
19 the deposition today.

20 Have you seen the list before?

21 A. **No.**

22 Q. So you didn't go over it.

23 Let me ask you this: Have you brought any
24 documents to the deposition with you today?

1 plaintiff that you may still maintain?

2 A. **No.**

3 Q. Have you ever corresponded by either e-mail
4 or in writing with plaintiff or anyone in
5 plaintiff's family?

6 A. **No.**

7 Q. Did you rely on any medical literature,
8 treatises in treating Ms. Madsen's condition?

9 A. **Yes.**

10 Q. What are they?

11 A. **Journals, textbooks, websites.**

12 Q. Did you consult them specifically as they
13 may relate to your treatment of Ms. Madsen or just
14 generally as part of your education?

15 A. **Generally as part of my education.**

16 Q. Okay. Do you have in your possession any
17 documents regarding Bard or the Bard's product at
18 issue in this case which is the Align sling, which
19 may include any e-mails, text messages, Tweets,
20 Internet posts, journal articles, any sort of --
21 that type of documents?

22 A. **I don't have it in my possession, but I --**
23 **the video I show patients is the animation video**
24 **that Bard shows on the website. I also refer the**

Page 58

Page 60

1 A. **No.**

2 Q. So I'm just going to go over these very --
3 I'm going to try to go over them briefly. I am just
4 trying to determine if there are any other documents
5 that you may have that we haven't received. Okay?

6 So if you can go to the next page, Page 2,
7 Request No. 1 asks you to bring your CV, which you
8 didn't, but you testified, I believe, that you have
9 it, and we ask that you produce it to us.

10 With respect to the records for
11 Ms. Veronica Madsen, other than the records that
12 were produced by the hospital to us, would you be in
13 possession of any other medical records?

14 A. **No.**

15 Q. Would you have any documents in your
16 possession, custody, or control that relate to
17 claims or defenses in this litigation?

18 A. **No.**

19 Q. Other than the medical records that were
20 produced to us, do you have any notes or charts
21 created by you that summarize the medical history of
22 the plaintiff?

23 A. **No.**

24 Q. Have you ever taken any photographs of the

1 **patient to the Bard website where I show them the**
2 **product I'm going to use.**

3 Q. I'm going to ask you a few more questions
4 about that later.

5 Have you issued any invoices or statements
6 or bills to plaintiff's counsel in this litigation?

7 A. **Could you repeat that question?**

8 Q. Yes, of course. Have you or your office
9 issued any invoices or statements or bills to
10 plaintiff's counsel --

11 A. **No.**

12 Q. -- who sits here today with us?

13 Okay. Do you maintain any journals,
14 diaries of your treatment of patients other than the
15 official medical records?

16 A. **No.**

17 Q. Do you maintain a separate account or
18 appointment books that may not have been produced to
19 us?

20 A. **No.**

21 Q. Have you received any documents at all from
22 plaintiff's counsel prior to the deposition today?

23 A. **Patient's medical records and the subpoena.**

24 Q. So you received a subpoena from the

15 (Pages 57 to 60)

EXAMINATION BY MR. KEDZIORA

Page 61

1 plaintiff's counsel's firm?

2 **A. I think so.**

3 Q. Okay. And you also received medical
4 records, you said?

5 **A. Maybe not the medical records. Just the
6 subpoena.**

7 Q. Just the subpoena?

8 **A. And the check.**

9 Q. Do you keep an accounting of your time that
10 you spend to prepare for a deposition?

11 **A. No.**

12 Q. So you wouldn't have any documents of your
13 time entries?

14 We, as lawyers, we enter our time into the
15 billing system.

16 Is that something that you need to do?

17 **A. No, I don't.**

18 Q. Okay. So you wouldn't have any records of
19 your time that you may have spent to prepare for the
20 deposition today?

21 **A. No.**

22 Q. Okay. Okay. That's all. So we've covered
23 all the categories in the Cross Notice of
24 Deposition.

Page 62

1 Have you at any time received a copy of the
2 complaint that Ms. Madsen has filed against Bard in
3 this litigation?

4 **A. Yes.**

5 Q. When did you receive it?

6 **A. I can't recall the date, but it was in the
7 past three months.**

8 Q. And who did you receive it from?

9 **A. The plaintiff's attorney.**

10 Q. So plaintiff's attorney has provided a copy
11 of the complaint to you?

12 **A. Yes.**

13 Q. What else did he provide to you?

14 **A. A check for \$40.**

15 Q. Okay.

16 **A. And a check today.**

17 Q. Okay. Anything else?

18 **A. No.**

19 Q. So have we now covered everything you have
20 reviewed, received, or analyzed in connection with
21 this case prior to today?

22 **A. Yes.**

23 Q. All right. Doctor, what I'm going to do
24 next, I'm going to mark the medical records that

Page 63

1 were produced to us as Exhibit 5. They may be
2 identical as plaintiff's counsel has marked
3 previously, but I cannot determine if there are
4 differences. So I'm going to mark them again. And
5 I'm just going to have a few follow-up questions.

6 **A. Sure.**

7 Q. I'm not trying to repeat questions, but if
8 you feel like I am, that's not my intent. I'm just
9 going to try to fill in some gaps. Okay?

10 MR. KRAMER: He has to make a complete
11 record for himself too. So there probably will
12 be overlap. We appreciate your patience and
13 time.

14 (Whereupon, Upputuri Exhibit
15 No. 5 was marked for
16 identification.)

17 BY MR. KEDZIORA:

18 Q. So for the record, these are the records
19 that were produced to us by Dr. Upputuri's practice.

20 Doctor, you testified earlier today that
21 you first seen Dr. -- I'm sorry -- Ms. Madsen on
22 [REDACTED] 2015; is that correct?

23 **A. Yes.**

24 Q. Do you remember who, if anyone, referred

Page 64

1 Ms. Madsen to you?

2 **A. No.**

3 Q. Do you recall why she was referred to you?

4 MR. KRAMER: Objection. Form. Foundation.

5 THE WITNESS: For incontinence, prolapse,
6 heavy periods, fibroids.

7 BY MR. KEDZIORA:

8 Q. Doctor, what are the symptoms of an
9 incontinence?

10 **A. Involuntary loss of urine.**

11 Q. Is that something that -- involuntary loss
12 of urine -- that Ms. Madsen reported to you during
13 that initial visit?

14 **A. Yes.**

15 Q. And if I can point you to your records,
16 it's on Page 1 in the middle of the page, and there
17 is a description of the urinary incontinence
18 starting with "Patient is also having urinary
19 leakage." Do you see that, Doctor?

20 **A. Um-hum.**

21 Q. What type of urinary incontinence did
22 Ms. Madsen report to you on [REDACTED] 2015?

23 **A. Stress urinary incontinence.**

24 Q. And how would you characterize "stress

16 (Pages 61 to 64)

EXAMINATION BY MR. KEDZIORA

Page 65

1 urinary incontinence?"

2 **A. Leakage of -- involuntary loss of urine**
3 **during exertion, coughing, sneezing.**

4 Q. Other than sneezing, coughing, is there
5 anything else that you wrote down in your record
6 that I just pointed to from that initial visit on
7 [REDACTED] 2015?

8 **A. Laughing and climbing stairs.**

9 Q. If you just follow down in the same
10 paragraph, you also noted that Ms. Madsen denied
11 nocturia. What's nocturia, Doctor?

12 **A. Urination at night.**

13 Q. So Ms. Madsen reported to you that she was
14 having urinary leakage of coughing, sneezing,
15 laughing, climbing stairs, correct?

16 **A. Yes.**

17 Q. Do you recall if those symptoms affected
18 the quality of life of Ms. Madsen?

19 **A. Yes.**

20 Q. And if I can point you to your record again
21 on Page 1, it states -- the record states, "Symptoms
22 impair her quality of life significantly." Do you
23 see that, Doctor?

24 **A. Yes.**

Page 66

1 Q. Did I read that correctly?

2 **A. Yes.**

3 Q. What did you mean when you said in the
4 record that those symptoms impaired Ms. Madsen's
5 quality of life significantly?

6 **A. Usually people can't function. They can't**
7 **go to a social event -- an example would be you**
8 **can't go to a party without worrying about losing**
9 **urine in the middle of the party.**

10 Q. Is there any other way in which urinary
11 incontinence may impair the quality of life of the
12 patient?

13 **A. If it's a chronic incontinence, you could**
14 **have perineal irritation.**

15 Q. So it was your understanding that prior to
16 [REDACTED] 2015, Ms. Madsen has had urinary
17 leakage symptoms that affected her life
18 significantly, correct?

19 **A. Yes.**

20 Q. Doctor, if we can turn to Page 2, you've
21 testified before that you've performed a pelvic exam
22 of -- on Ms. Madsen on that day. What was your
23 diagnosis from [REDACTED] 2014 [sic]?

24 MR. KRAMER: Objection. Form.

Page 67

1 Mischaracterizes the documents.

2 THE WITNESS: Abnormal bleeding, pressure,
3 unspecified urinary incontinence, uterine
4 polyps, slash, fibroid.

5 BY MR. KEDZIORA:

6 Q. Doctor, do you recall whether Ms. Madsen
7 had prior to coming to visit with you on
8 [REDACTED] 2014, [sic] a procedure called Burch
9 procedure?

10 **A. Yes.**

11 Q. So did Ms. Madsen have a Burch procedure
12 prior to coming to see you on [REDACTED] 2015?

13 **A. Yes.**

14 Q. What's Burch procedure?

15 **A. It's a technique where you attach the**
16 **Cooper's ligament -- give support of the Cooper's**
17 **ligament by placing stitches into the periosteum of**
18 **the bone.**

19 Q. What condition is that procedure supposed
20 to treat?

21 **A. Urinary incontinence.**

22 Q. So it was your understanding that
23 Ms. Madsen had that procedure done prior to coming
24 to see you in [REDACTED] of 2015, correct?

Page 68

1 **A. Yes.**

2 Q. When did she have that procedure done?

3 **A. I believe it was 2002.**

4 Q. So that was about 13 years prior to
5 coming --

6 **A. Yes.**

7 Q. -- to see you?

8 What does it tell you if somebody had the
9 Burch procedure that long ago and the patient still
10 experiences urinary leakage? Does it have any
11 consequence?

12 **A. What do you mean by "consequence"?**

13 Q. Strike that question.

14 If Ms. Burch [sic] -- if Ms. Madsen had a
15 Burch procedure in 2002, it -- does it mean that she
16 had urinary incontinence around that time?

17 **A. Yes.**

18 Q. Does it also mean that the Burch procedure
19 doesn't completely resolve the symptoms?

20 **A. It didn't resolve the symptoms.**

21 Q. It didn't or --

22 **A. It did not.**

23 Q. It did not. So it means that Ms. Madsen
24 has had an incontinence problem since at least 2002

17 (Pages 65 to 68)

EXAMINATION BY MR. KEDZIORA

Page 69

1 if not prior to that?

2 **A. Yes.**

3 Q. What is the next date that you saw

4 Ms. Madsen after your initial visit on

5 [REDACTED] -- I'm sorry -- [REDACTED] [sic] [REDACTED]

6 2015?

7 MR. VEZINO: You mean [REDACTED]

8 MR. KEDZIORA: Yes. I apologize.

9 BY MR. KEDZIORA:

10 Q. After [REDACTED]

11 **A. [REDACTED]**

12 Q. And what was the reason for the visit on

13 [REDACTED] 2015?

14 **A. She was following up on her -- on her**
 15 **abnormal bleeding and the biopsy and to have bladder**
 16 **measurements for urinary incontinence.**

17 Q. Doctor, if we can turn to Page 7 of her
 18 records, you conducted an exam on Ms. Madsen on

19 [REDACTED] 2015; is that correct?

20 **A. Yes.**

21 Q. And what did you observe on [REDACTED]

22 2015?

23 **A. She had a cystocele, first degree uterine**
 24 **prolapse, first degree urethral hypermobility.**

Page 70

1 Q. And plaintiff's counsel covered those
 2 before. I'm not going to ask any follow-up
 3 questions. But if we can go down under Assessments,
 4 what was your assessment of Ms. Madsen on
 5 [REDACTED] 2015?

6 **A. Abnormal uterine bleeding, urinary polyp**
 7 **anemia, cystocele, uterine prolapse, and stress**
 8 **urinary incontinence.**

9 Q. I'm just going to ask a few questions about
 10 the anemia. What is anemia?

11 **A. Anemia is lack of adequate blood level.**

12 Q. What are the symptoms of anemia?

13 **A. Fatigue, tiredness, dizziness,**
 14 **lightheadedness.**

15 Q. You said dizziness and lightheadedness?

16 **A. Um-hum.**

17 Q. Would it surprise you if I told you that
 18 Ms. Madsen testified that she fainted probably about
 19 the month, maybe two months, prior to coming to see
 20 you on [REDACTED] 5, 2015?

21 MR. KRAMER: Objection. Form. Foundation.

22 THE WITNESS: The question is is it going
 23 to surprise me? Yes. A little -- yeah.
 24

Page 71

1 BY MR. KEDZIORA:

2 Q. It would surprise you?

3 **A. Because I wasn't aware of that.**

4 Q. You were not aware of that?

5 If a patient has an anemia, would it be --
 6 strike that.

7 If we can go down under plan, Doctor, on
 8 Page 7, what was your plan for treatment of
 9 Ms. Madsen after this visit on [REDACTED] 2015?

10 **A. This goes to hysterectomy and also**
 11 **hysteroscopy, polypectomy, and uterine ablation and**
 12 **midurethral sling.**

13 Q. Okay. So the first one is LAVH. Do you
 14 see that, Doctor? What's LAVH?

15 **A. Laparoscopic-assisted vaginal hysterectomy.**

16 Q. What's uterine ablation?

17 **A. It's a procedure where we go and burn the**
 18 **lining of the uterus to control the bleeding.**

19 Q. So in addition to implanting a sling in
 20 Ms. Madsen, you've also discussed other procedures;
 21 is that correct?

22 **A. Yes.**

23 Q. And you've testified before that you would
 24 consider those discussions that you had with

Page 72

1 Ms. Madsen on that day informed consent discussions?

2 **A. Um-hum. Yes.**

3 Q. Doctor, do you recall how much time you
 4 spent with Ms. Madsen on [REDACTED] 2015,
 5 discussing the risks and benefits of the procedures
 6 that you were recommending to perform to Ms. Madsen?

7 **A. 30 minutes.**

8 MR. KRAMER: Objection to form.

9 BY MR. KEDZIORA:

10 Q. Do you have any recollection of what you
 11 discussed with Madsen during that -- I'm sorry --
 12 during that discussion on [REDACTED] 2015?

13 **A. I don't have a recollection as to exactly**
 14 **what I discussed, but before a sling, there are**
 15 **certain risks I routinely discuss.**

16 Q. So what are the risks that you routinely
 17 discuss with your patients prior to a sling
 18 procedure?

19 **A. Pain, failure, erosion, urinary retention,**
 20 **bladder perforation, infection, bleeding, hematomas,**
 21 **dyspareunia.**

22 Q. And you have discussed all of those risks
 23 that you just named with Ms. Madsen on
 24 [REDACTED] 2015?

18 (Pages 69 to 72)

EXAMINATION BY MR. KEDZIORA

Page 73

1 **A. It's not a comprehensive list. These are**
2 **the -- I can't recall the other ones right now.**

3 Q. And that discussion, like this, you always
4 have with the patients prior to performing a sling
5 procedure?

6 **A. Yes.**

7 Q. You also noted in your record that you've
8 discussed -- discussed the fail rates or failure
9 rates of the procedure. What is your
10 understanding -- is that correct?

11 **A. Yes.**

12 Q. What is -- tell -- strike that.

13 What specifically did you tell Ms. Madsen
14 about the fail rates?

15 **A. I think they usually say about 20 percent.**

16 Q. So that means that, in about 20 percent of
17 the patients, the procedure may not resolve or help
18 with the symptoms that the patient is experiencing?

19 **A. Yes.**

20 Q. So is that -- and that is something you've
21 told Ms. Madsen, correct?

22 **A. I usually talk about fail rates in any**
23 **surgery so...**

24 Q. Doctor, you then noted in your record from

Page 75

1 videos of the sling procedure to Ms. Madsen?

2 **A. Yes.**

3 Q. What video was that?

4 MR. KRAMER: Objection. Form. Vague.

5 THE WITNESS: It's an animation as to
6 exactly how the procedure is done, how the
7 needles are inserted, how it goes through the
8 muscles in the groin and how the sling is
9 supposed to work.

10 BY MR. KEDZIORA:

11 Q. That video that you're referring to, do you
12 have a DVD containing that video?

13 **A. Not a DVD. We have online access. So I**
14 **use a website.**

15 Q. Is there any specific website that you
16 recall using on that day to show the video to
17 Ms. Madsen?

18 **A. I can't recall a specific website, but I've**
19 **used -- Bard is one of the websites I have used.**
20 **They have an animation, a video.**

21 Q. All right. Other than Bard, are there any
22 others that you use?

23 **A. That's the one I used to use.**

24 Q. You used to use Bard?

Page 74

1 [REDACTED] 2015, that you've also discussed FDA
2 warnings. Do you see that?

3 **A. Yes.**

4 Q. What FDA warnings are you or did you refer
5 to in this paragraph?

6 **A. I think about erosions mostly and pain.**

7 Q. Is there any specific FDA warning that you
8 had in mind when you had that discussion with
9 Ms. Madsen?

10 **A. No. I can't recall right now. I usually**
11 **tell them that the FDA warnings of meshes in general**
12 **and, if she wants more information, go to the FDA**
13 **website.**

14 Q. Did Ms. Madsen ask you any questions that
15 you recall about the FDA warnings after you did tell
16 her that this information is available on the
17 website?

18 **A. I can't recall.**

19 Q. Did she have ability to ask questions?

20 **A. She did.**

21 Q. If she would have asked questions, you
22 would have answered those for her?

23 **A. Yes.**

24 Q. During that discussion, did you show any

Page 76

1 **A. Yes.**

2 Q. So on that day, on [REDACTED] 2015, you
3 and Ms. Madsen went to or went onto Bard's website,
4 and you showed some videos of the sling procedure to
5 Ms. Madsen?

6 **A. Yes.**

7 Q. And was the video for the procedure of the
8 Align sling product that was later implanted into
9 Ms. Madsen?

10 **A. Yes.**

11 Q. Do you recall whether Ms. Madsen had any
12 questions about the video or any -- anything that
13 related to the procedure that was showed in the
14 video?

15 **A. No, I can't recall.**

16 Q. Between [REDACTED] of 2015 and the
17 actual procedure on [REDACTED] -- I'm sorry -- on
18 [REDACTED] 2006, [sic] did you see Ms. Madsen
19 during that time period?

20 **A. No.**

21 Q. Did she have to have any tests done prior
22 to the surgery?

23 **A. Possibly a blood count.**

24 Q. Okay. But you personally did not see

19 (Pages 73 to 76)

EXAMINATION BY MR. KEDZIORA

Page 77

1 Ms. Madsen during that time period?

2 **A. No. I think what happened was she had some**
3 **insurance issues towards the end of the year.**
4 **Initially she wanted to get it done right away**
5 **because insurance was expiring. That's why I**
6 **remember her, and I think she didn't have insurance.**
7 **And then she came back with insurance later on.**

8 Q. Doctor, if we can turn to Page No. 8 of
9 your medical records, what did you note under
10 History of Present Illness in the medical records
11 from [REDACTED] -- I'm sorry -- from [REDACTED] [REDACTED]
12 2016?

13 **A. Patient is a 48-year-old female, G3P2012**
14 **for midurethral sling, hysteroscopy, D&C, and**
15 **uterine ablation.**

16 Q. What does G3P2012 stand for?

17 **A. G stands for gravity, total pregnancies of**
18 **three. Para is two deliveries, and zero is no**
19 **preterm deliveries. One is one miscarriage, slash,**
20 **abortion and two living children.**

21 Q. So Ms. Madsen came to see on [REDACTED] [REDACTED] --
22 strike that.

23 Ms. Madsen came to see you on [REDACTED] [REDACTED]
24 2006 [sic] for -- to have multiple procedures done

Page 78

1 on that day; is that correct?

2 **A. Yes.**

3 Q. So what were the procedures that you were
4 planning to perform on [REDACTED] -- strike that -- on
5 [REDACTED] [REDACTED] 2016?

6 **A. Hysteroscopy, D&C, and midurethral sling.**

7 Q. What's D&C?

8 **A. Dilation and curettage.**

9 Q. So just to be clear, in addition to
10 implanting the sling, you performed other procedures
11 on that day, correct?

12 **A. Yes.**

13 Q. Doctor, if we can turn to Page No. 8
14 towards the bottom, there's a section called Past
15 Medical History. Do you see that, Doctor?

16 **A. Yes.**

17 Q. And there's some conditions listed in that
18 section. Do you see that?

19 **A. Yes.**

20 Q. Where would that information come from that
21 you later put into that section of the medical
22 report?

23 **A. Patient -- patient's history and, if she**
24 **was seen by another physician, diagnosis established**

Page 79

1 **by another physician.**

2 Q. So it's a combination of what you have
3 learned from Ms. Madsen and potentially other
4 medical records?

5 **A. Medical records, yes.**

6 Q. And what medical history did Ms. Madsen
7 have prior to her surgery on [REDACTED] [REDACTED] 2016?

8 **A. She had an -- allergies, airborne**
9 **allergies, and also GERD, gastroesophageal reflux**
10 **disease.**

11 Q. Doctor, there's more on the next page,
12 Page No. 9.

13 **A. Gastritis, abnormal Pap smear, irregular**
14 **menses, fibroid, UTI, vaginal infection, asthma,**
15 **anemia, arthritis, back pain, hiatal hernia, nausea**
16 **and vomiting.**

17 Q. Is there -- just for the record to be
18 clear, these are the conditions that Ms. Madsen had
19 prior to her implant surgery on [REDACTED] [REDACTED] of
20 2016?

21 **A. Yes.**

22 Q. And the back pain, as it's described in
23 this medical record, includes sciatica. Do you see
24 that, Doctor?

Page 80

1 **A. I do.**

2 Q. What's sciatica, Doctor?

3 **A. Sciatica is a lower back pain possibly due**
4 **to the compression of the sciatic nerve along the**
5 **distribution of the sciatic nerve.**

6 Q. So that was your understanding that that's
7 something that Ms. Madsen had experienced prior to
8 the implant surgery on [REDACTED] [REDACTED] 2016?

9 **A. Yes.**

10 Q. And also after -- I'm sorry. Under Past
11 Surgical History, Doctor, there's a notation
12 regarding the failed Burch procedure. Do you see
13 that, Doctor?

14 **A. Yes.**

15 Q. Doctor, if we can turn to Page No. 10,
16 prior to the actual procedure on that date, did you
17 see Ms. Madsen prior to seeing her in the operating
18 room?

19 **A. Yes.**

20 Q. Where did you meet with Ms. Madsen?

21 **A. In the preop holding.**

22 Q. Okay. Do you have any independent
23 recollection of your discussions with Ms. Madsen on
24 that day?

20 (Pages 77 to 80)

EXAMINATION BY MR. KEDZIORA

Page 81

1 **A. No.**

2 Q. All right. Under Plan, Doctor, on 10 page,
3 what was your plan for the procedure that you were
4 about to perform on that date?

5 **A. Midurethral sling, hysteroscopy, D&C,
6 uterine ablation, and risk, benefits, and sling
7 complications discussed extensively.**

8 Q. So you had another discussion with
9 Ms. Madsen on [REDACTED] 2016, about the risks
10 and benefits of the sling procedure?

11 **A. Yes.**

12 Q. What did you discuss? What are the
13 benefits and the risks that you discussed on
14 [REDACTED] 2016?

15 **A. Urinary retention, perforation, infection,
16 dyspareunia, groin pain, erosion.**

17 Q. And these are just a few? There could be
18 others, right?

19 **A. Along with the others.**

20 Q. So you had another -- just so we have a
21 clear record, you had another discussion with
22 Ms. Madsen right before the procedure on
23 [REDACTED] 2016?

24 **A. Yes.**

Page 82

1 Q. Did Ms. Madsen have any questions for you
2 that you recall prior to the procedure on
3 [REDACTED] 2016?

4 **A. I can't recall.**

5 Q. If she had any questions, would you have
6 answered those for her?

7 **A. To the best of my ability.**

8 Q. Doctor, what procedure have you performed
9 on Ms. Madsen on [REDACTED] 2016?

10 **A. Abnormal uterine bleeding, stress urin- --
11 I'm sorry -- operative hysteroscopy, uterine
12 ablation, midurethral sling, and cystoscopy.**

13 Q. I'm going to mark the operative report as a
14 separate exhibit.

15 (Whereupon, Upputuri Exhibit
16 No. 6 was marked for
17 identification.)

18 BY MR. KEDZIORA:

19 Q. Just for the record, we've marked as
20 Exhibit 6 the records from the -- actually the
21 operative report authored by Dr. Upputuri from the
22 procedure that took place on [REDACTED] 2016.

23 Doctor, if you could turn to page number --
24 on the second -- to the second page, which is the

Page 83

1 page numbered 23. Do you see the Bates label in the
2 lower right corner of the document? There is --
3 let's strike that.

4 There is a number in the lower right corner
5 of the document. Do you see that, Doctor?

6 **A. Yes.**

7 Q. We refer to those as Bates labels. So are
8 you on No. 23?

9 **A. Yes.**

10 MR. KRAMER: Counsel, can I have a copy of
11 that?

12 MR. KEDZIORA: Sure.

13 BY MR. KEDZIORA:

14 Q. So this is a report from the operation that
15 you performed on Ms. Madsen on [REDACTED] 2016;
16 is that correct?

17 **A. Yes.**

18 Q. If you can tell the jury what procedure
19 you've performed, and I'll ask you just to describe
20 the procedure and what you've done on Ms. Madsen on
21 that day.

22 **A. Midurethral -- hysteroscopy, a D&C,
23 followed by uterine ablation, followed by
24 midurethral sling.**

Page 84

1 Q. So which procedure did you perform first?

2 **A. Hysteroscopy, then the ablation, then the
3 sling.**

4 Q. And what -- I apologize. Go ahead.

5 **A. Hysteroscopy first.**

6 Q. What's hysteroscopy?

7 **A. We insert a camera into the uterine cavity
8 and distend the cavity with a Ringer's lactate
9 medium and then visualize for any pathology. In
10 this case a polyp was noted, and it was removed.
11 Following, uterine ablation was performed.**

12 Q. And what did you do next?

13 **A. After that I performed the midurethral
14 sling.**

15 Q. And what specifically did you do when you
16 say that you performed midurethral sling?

17 **A. Well, I started off making two incisions in
18 the medial and distal obturator foramen after
19 injecting with Lidocaine diluted with 1 to 200,000
20 dilution of epinephrine. Then a
21 two-and-a-half-centimeter incision was made under
22 the suburethral area. And using a Metzenbaum
23 scissor, that incision was dissected toward a stab
24 incision of the obturator foramen. After that we**

21 (Pages 81 to 84)

EXAMINATION BY MR. KEDZIORA

Page 85

1 use a spiral hook perforated through the obturator
2 incision, and while maintaining contact with my
3 index finger at all times to avoid bladder
4 perforation, the needle was advanced inferiorly and
5 medially into the suburethral opening.

6 In a similar -- the sling was attached and
7 the media was withdrawn.

8 In a similar matter, the contralateral side
9 was also penetrated with a needle and a sling was
10 attached.

11 Following this, a video cystoscopy was
12 performed to look for any perforations or contrabine
13 (phonetic) of the bladder. None was noted.

14 The sling material was trimmed at the edge
15 of the skin, and the groin area and the suburethral
16 incision was closed and running, lock manner, with
17 and 2-0 Vicryl suture. The skin incisions were
18 enclosed with Steri strips.

19 Q. Well, during that procedure, is there a
20 time where you checked whether the sling is -- there
21 is a proper tension on the sling?

22 A. Yes. We use a No. 8 Hegar dilator, and we
23 put it underneath the urethra to make sure it's
24 tension-free.

Page 87

1 no leakage is noted, and then the ablation was
2 carried out for a period of 105 seconds.

3 Q. And after that, you performed the sling
4 procedure?

5 A. Sling, yes.

6 Q. Was the patient in a stable condition at
7 the end of the procedure?

8 A. Yes, she was.

9 Q. When is the next time, Doctor, that you've
10 seen Ms. Madsen after the procedure on [REDACTED]
11 2016?

12 A. The next morning.

13 Q. Did Ms. Madsen have any complaints the next
14 morning on [REDACTED] 2016?

15 MR. KRAMER: You may want to refer back to
16 your office chart.

17 THE WITNESS: Yeah. That seems --

18 MR. VEZINO: Bottom of Page 12.

19 THE WITNESS: Yeah, I saw her on [REDACTED] 16 at
20 7:30 a.m.

21 BY MR. KEDZIORA:

22 Q. Doctor, do you see a section called
23 Subjective in the report?

24 A. Yes.

Page 86

1 Q. And in that specific case of Ms. Madsen,
2 was the sling properly implanted and tension-free?

3 A. Yes.

4 Q. Doctor, what's -- I'm not sure if I'm
5 pronouncing it correctly -- NovaSure instrument?

6 A. That's a uterine ablation instrument.

7 Q. So that's something that you've performed
8 prior to implanting the slings --

9 A. Yes.

10 Q. -- product?

11 So if you can just tell or explain what
12 you've done, what procedure you've performed with
13 respect to the ablation using the NovaSure
14 instrument.

15 A. After the D&C, NovaSure -- or the uterine
16 cavity measurement was taken. It ended up being 6.5
17 centimeters. And the NovaSure instrument was
18 inserted through the cervix into the uterus. And
19 the cavity with the 3.5 centimeters was also
20 measured. This was entered in the base unit.

21 A cavity assessment was performed where the
22 base unit pumps CO2 gas into the uterine cavity to
23 look for any leakages.

24 The cavity assessment is successful after

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1 Q. What does it mean, "subjective"?

2 A. Anything that the patient states.

3 Q. Okay. And what did the patient state to
4 you on [REDACTED] 2016?

5 A. That her pain is minimal, two out of ten.
6 Two episodes of vaginal bleeding, small dime-size
7 dark clots and no bright-red bleeding.

8 Q. And then, Doctor, what does the "objective"
9 mean?

10 A. Objective, my findings.

11 Q. What were your findings from the visit on
12 [REDACTED] 2016?

13 A. Normal vitals, normal abdominal exam,
14 normal vaginal exam, and also hemoglobin of 9.7.

15 Q. Do you recall what time you performed --
16 what time you performed the procedure the day
17 before?

18 A. I can't recall.

19 Q. Not the exact time, but do you recall was
20 it in the morning or the afternoon?

21 A. I think it's in the afternoon because I did
22 my note at 7:58 p.m. So I usually try to do my
23 notes about a minute -- or within a few hours after
24 the procedure.

22 (Pages 85 to 88)

EXAMINATION BY MR. KEDZIORA

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1 Q. So after a procedure like this, would you
2 expect the patient to be released home the next --
3 I'm sorry -- the same day or --

4 A. Usually, yes.

5 Q. Was there a reason why Ms. Madsen was not
6 released home on [REDACTED] 2016?

7 A. Could be because it's a late procedure.
8 That's one possibility. And when there's a late
9 procedure, we keep them overnight and send them home
10 in the morning.

11 Q. When is the next time that you saw
12 Ms. Madsen after the visit on [REDACTED] 2016?

13 A. I believe it was [REDACTED]

14 Q. I think that's correct, Doctor. And the
15 record starts on Page 13, bottom of Page 13.

16 MR. KRAMER: Good memory, Doctor.

17 BY MR. KEDZIORA:

18 Q. And what was the reason that Ms. Madsen
19 came to see you on [REDACTED] 2016?

20 A. Complains -- she came with complaints of
21 pain, swelling of the vulva, excessive pinkish
22 discharge with a burnt odor, heart palpitations,
23 fever, urgency, pressure in the ear with little
24 hearing, dizziness, lightheadedness, and shaky.

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1 Q. And, Doctor, we've talked before that
2 Ms. Madsen reported to you -- or you've observed
3 from the records that Ms. Madsen had experienced
4 dizziness and she was lightheaded even before the
5 procedure on [REDACTED] 2016, correct?

6 A. Correct.

7 Q. So these are similar symptoms to what she
8 had complained about prior to the procedure that she
9 now reported to you on this -- on [REDACTED]
10 2016?

11 MR. KEDZIORA: Objection to the form.

12 THE WITNESS: With the exception of the
13 pinkish discharge.

14 BY MR. KEDZIORA:

15 Q. After [REDACTED] 2016, when did you see
16 Ms. Madsen next?

17 A. I believe it was [REDACTED] 2016.

18 Q. And, Doctor, the record starts on Page 17.

19 What was the reason that Ms. Madsen
20 presented to you on [REDACTED] 2016?

21 A. She was there for a postop check with
22 shortness of breath, dizziness, and some vaginal
23 spotting.

24 Q. Did she report any pain to you on that day?

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1 A. Yes. "Symptoms have not changed" is what I
2 have documented from [REDACTED] so...

3 I think this is the day I called her.

4 Q. So you didn't actually see --

5 A. No. I actually called her to see -- to
6 check up on her because of her complaints, and it
7 states here that I called the patient at home to
8 check up on her, and then I brought her in just --

9 Q. And, Doctor, under "postop check" right
10 above the paragraph I think you've read from, do you
11 see a statement -- actually section -- or statement
12 where it says, "She denies any pain"? Do you see
13 that, Doctor?

14 A. Yes.

15 Q. So what does it mean when you put that she
16 denies any pain? Who are you referring to?

17 A. Referring to any kind of a serious pelvic
18 pain.

19 Q. Okay. So it means that Ms. Madsen denied
20 having any pain on [REDACTED] 2016?

21 A. Yes, with only some soreness in her groin.

22 Q. Is that something normal to have some
23 soreness in the groin after a procedure like
24 Ms. Madsen had underwent?

Page 92

1 A. Yes.

2 Q. Were you aware at that time that Ms. Madsen
3 went to the emergency room twice prior to coming to
4 see you on [REDACTED] 2016?

5 A. Yes.

6 MR. KRAMER: Object to the form.

7 Mischaracterizes the record.

8 BY MR. KEDZIORA:

9 Q. So, Doctor, if I can refer you to the other
10 records, which are Bates labeled Madsen PSR. I
11 don't remember the exhibit number, but that's the
12 prior exhibit. Do you have it in front of you?

13 A. Yes, I do.

14 Q. If we can turn to Page No. 31.

15 A. Okay.

16 Q. I'm going to represent for the record that
17 this is a report from the emergency room regarding
18 Ms. Madsen's visit on [REDACTED] 2016.

19 There's an indication or mention that
20 Ms. Madsen incidentally did get a flu shot yesterday
21 prior to discharge. It's under HPI comments. Do
22 you see that, Doctor?

23 A. Yes.

24 Q. And you did testify before it's a standard

23 (Pages 89 to 92)

EXAMINATION BY MR. KEDZIORA

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1 protocol to administer a flu shot prior to
2 discharging a patient?

3 **A. If she has received one, yes, it's the**
4 **hospital protocol.**

5 Q. I'm sorry.

6 **A. If she hasn't received one in the prior**
7 **year, in the winter months, the hospital wants you**
8 **to get flu shots.**

9 Q. And is it true, Doctor, that some of the
10 most common side effect of a flu shot could be a
11 fever?

12 **A. Yes.**

13 Q. And isn't it true, Doctor, that one of the
14 common side effects of the flu shot could be being
15 lightheaded?

16 **A. Possible.**

17 Q. Is one of the side effects of the flu
18 shot -- strike that.

19 Is one of the potential side effects of a
20 flu shot a dizziness?

21 **A. Yes.**

22 Q. It could be, correct?

23 **A. It could.**

24 Q. And these are the symptoms that Ms. Madsen

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1 (Whereupon, Upputuri Exhibit No.
2 7 was marked for
3 identification.)

4 BY MR. KEDZIORA:

5 Q. Doctor, do you recall whether or not you
6 referred Ms. Madsen to a cardiologist?

7 **A. I can't recall. It looks like that I did**
8 **here after the negative CT.**

9 Q. And what would be the reason for you to
10 refer Ms. Madsen to --

11 **A. Because of the palpitations,**
12 **lightheadedness, dizziness.**

13 Q. And after that physical of the
14 cardiologist, have you received any results back
15 from the -- or reports back from the cardiologist
16 that you recall?

17 **A. I can't recall but looking at here --**

18 Q. Looking here, you did?

19 **A. Yeah.**

20 Q. Okay. And did this report that was just
21 marked as an exhibit, 7, show any concerns to you
22 regarding to Ms. Madsen's cardiac condition?

23 **A. Yes. It looks like she has an -- isolated**
24 **PVCs.**

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1 had complained to you when she came to see you on
2 [REDACTED] 2016, correct?

3 **A. Yes.**

4 Q. Doctor, if you can turn to Page No. 28.

5 **A. The same?**

6 Q. Of the PSR set. This is still the record
7 from the emergency room visit. Under the section
8 called ED Records, do you see that section, Doctor?

9 **A. Um-hum.**

10 Q. Do you see where it says, "Multiple
11 complaints, possible allergic reaction, a hundred
12 percent RA"?

13 **A. Yes.**

14 Q. Do you have any understanding what the
15 possible allergic reaction was to?

16 **A. I'm assuming he's referring to the flu shot**
17 **she got.**

18 Q. All right. Doctor, I'm going to switch
19 back to your last visit on [REDACTED] 2016. I'm
20 going to mark these as Exhibit -- I believe it's 7.
21 Is that correct, ma'am? Can you mark it as
22 Exhibit 7?
23
24

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1 Q. What are those?

2 **A. Premature ventricular contractions.**

3 Q. Okay. And what could be potential symptoms
4 of that condition?

5 **A. If frequent PVCs, they can cause passing**
6 **out, lightheadedness, and dizziness.**

7 Q. So my records indicate that you've seen
8 Ms. Madsen last time on [REDACTED] --

9 **A. Um-hum.**

10 Q. -- 2016; is that correct?

11 **A. Yes.**

12 Q. You haven't seen her since then?

13 **A. I haven't seen her since then.**

14 Q. Have you talked to her over the telephone,
15 for example?

16 **A. No.**

17 Q. So, Doctor, we talked before about certain
18 preimplant symptoms that Ms. Madsen had experienced.
19 Do you recall that?

20 **A. (Nodding head.)**

21 Q. So you would agree -- is that a yes?

22 **A. Yes.**

23 Q. So you would agree that she was medically
24 compromised even before the surgery?

24 (Pages 93 to 96)

EXAMINATION BY MR. KEDZIORA

<p style="text-align: right;">Page 97</p> <p>1 MR. KRAMER: Objection to form.</p> <p>2 THE WITNESS: What do you mean by</p> <p>3 "compromised"?</p> <p>4 BY MR. KEDZIORA:</p> <p>5 Q. Let me rephrase that. She had experienced</p> <p>6 symptoms that significantly impacted her quality of</p> <p>7 life?</p> <p>8 A. Yes.</p> <p>9 Q. Can you say to a reasonable degree of the</p> <p>10 medical probability what have caused -- let me</p> <p>11 strike that.</p> <p>12 Do you understand or do you have knowledge</p> <p>13 what complaints Ms. Madsen attributes to the mesh</p> <p>14 product that was implanted into her?</p> <p>15 A. No.</p> <p>16 Q. I'm just going to represent a few for the</p> <p>17 record. She attributes pelvic floor pain and</p> <p>18 tightness, painful intercourse, sciatic nerve pain,</p> <p>19 weakness and numbness in her left leg, nerve pain in</p> <p>20 her -- in her thighs, deformity, and recurrent</p> <p>21 incontinence.</p> <p>22 By the way, Doctor, deformity, have you</p> <p>23 ever observed that Ms. Madsen had any deformity on</p> <p>24 her abdomen?</p>	<p style="text-align: right;">Page 99</p> <p>1 as to what type of deformity she might have</p> <p>2 developed after the surgery?</p> <p>3 MR. KRAMER: Objection. Form. Foundation.</p> <p>4 THE WITNESS: No.</p> <p>5 BY MR. KEDZIORA:</p> <p>6 Q. So can you -- now, knowing what those</p> <p>7 conditions were -- complaints are, can you say to a</p> <p>8 reasonable degree of medical probability what have</p> <p>9 caused those conditions that -- or her symptoms that</p> <p>10 Ms. Madsen attributes to the mesh product?</p> <p>11 MR. KRAMER: Objection. Form. Foundation.</p> <p>12 Calls for speculation.</p> <p>13 THE WITNESS: Could you repeat those?</p> <p>14 BY MR. KEDZIORA:</p> <p>15 Q. Yes. I just listed to you the complaints</p> <p>16 that Ms. Madsen attributes to the mesh product.</p> <p>17 Do you have any information or can you say</p> <p>18 to a reasonable degree of medical probability what</p> <p>19 have caused those conditions or symptoms?</p> <p>20 MR. KRAMER: Same objections. Add</p> <p>21 compound.</p> <p>22 THE WITNESS: Some of them possibly from</p> <p>23 the sling procedure.</p> <p>24</p>
<p style="text-align: right;">Page 98</p> <p>1 MR. KRAMER: Objection. Form. Vague as to</p> <p>2 time.</p> <p>3 THE WITNESS: Not that I can recall.</p> <p>4 BY MR. KEDZIORA:</p> <p>5 Q. The procedure that you've performed on</p> <p>6 Ms. Madsen, the sling procedure and the others, do</p> <p>7 they leave any scars or marks on the outside of the</p> <p>8 body?</p> <p>9 A. On the groin area.</p> <p>10 Q. What are the typical marks or scars?</p> <p>11 A. It's about two, three-millimeter stab</p> <p>12 incisions.</p> <p>13 Q. And that's in the groin area?</p> <p>14 A. In the groin area.</p> <p>15 Q. And that's something Ms. Madsen would have</p> <p>16 after the procedure?</p> <p>17 A. Yes.</p> <p>18 Q. And that's totally normal?</p> <p>19 A. Yes.</p> <p>20 Q. And other than those small incisions, scars</p> <p>21 from the small incisions, you don't recall that</p> <p>22 Ms. Madsen had any other deformity?</p> <p>23 A. No.</p> <p>24 Q. Is there anything that comes to your mind</p>	<p style="text-align: right;">Page 100</p> <p>1 BY MR. KEDZIORA:</p> <p>2 Q. Okay. And can you say to a reasonable</p> <p>3 degree of medical probability that the sling</p> <p>4 procedure that was performed of -- on Ms. Madsen</p> <p>5 have resulted or caused those conditions? And, if</p> <p>6 so, which?</p> <p>7 MR. KRAMER: Same objections.</p> <p>8 BY MR. KEDZIORA:</p> <p>9 Q. You can answer the question.</p> <p>10 A. Possible.</p> <p>11 Q. Which --</p> <p>12 A. Some of them.</p> <p>13 Q. Which ones are the possible causes?</p> <p>14 A. Groin pain, dyspareunia, possible leg</p> <p>15 numbness, but I'm not sure if sciatica pain can be</p> <p>16 caused or any abdominal deformity from the sling.</p> <p>17 Q. So just to make sure I understand, you're</p> <p>18 saying that groin pain, dyspareunia, could be caused</p> <p>19 by the mesh product, but you're not saying that in</p> <p>20 this specific case that's what really happened, that</p> <p>21 the mesh product have caused those symptoms to</p> <p>22 Ms. Madsen?</p> <p>23 MR. KRAMER: Objection. Form. Foundation.</p> <p>24 Calls for speculation.</p>

EXAMINATION BY MR. KEDZIORA

<p style="text-align: right;">Page 101</p> <p>1 THE WITNESS: It's possible. 2 BY MR. KEDZIORA: 3 Q. I understand that. That's not my question. 4 I know it's possible. That's your testimony? It's 5 possible? 6 A. Yes. 7 Q. But it's not your testimony that it's 8 actually what happened in this specific case of 9 Ms. Madsen? 10 MR. KRAMER: Same objections. 11 Counsel, he testified he hasn't seen her 12 since [REDACTED] of 2015. 13 THE WITNESS: So you're saying -- you're 14 asking me cause and effect relation, like if 15 this procedure caused -- is causing these 16 symptoms? 17 BY MR. KEDZIORA: 18 Q. That's correct. You're saying that it's 19 possible. I understand that. 20 But I'm asking you whether or not you have 21 an opinion if this is actually what happened in this 22 specific instance of Ms. Madsen. 23 A. Yes. 24 MR. KRAMER: Same objections.</p>	<p style="text-align: right;">Page 103</p> <p>1 A. Yes. 2 MR. KRAMER: Same objections to that 3 previous question. 4 BY MR. KEDZIORA: 5 Q. And as you know, as we have discussed, 6 Ms. Madsen have been complaining or reporting some 7 of those symptoms even before the implant surgery in 8 [REDACTED] of 2016, correct? 9 A. Yes. 10 MR. KRAMER: Objection. Form. 11 Mischaracterizes. 12 BY MR. KEDZIORA: 13 Q. Doctor, do you believe that plaintiff was 14 an appropriate candidate for the Bard product? 15 A. Yes. 16 Q. Why? 17 A. Because she had a stress urinary 18 incontinence and I've used the Bard product -- since 19 I think 2006 or 2007 I've been using the product. 20 Q. Did Ms. Madsen ever report to you any 21 complaints after the implant procedure that you 22 would not consider a normal or expected symptoms or 23 conditions after the procedure like she had 24 underwent?</p>
<p style="text-align: right;">Page 102</p> <p>1 BY MR. KEDZIORA: 2 Q. You do have an opinion of what have 3 happened? 4 MR. KRAMER: Same objections. 5 THE WITNESS: No. I don't. 6 BY MR. KEDZIORA: 7 Q. Okay. So you have no opinion -- just so we 8 have a clear record -- 9 A. No opinion. 10 MR. KRAMER: Same objections and asked and 11 answered. 12 BY MR. KEDZIORA: 13 Q. I'm just going to ask the question again 14 just so we have a clear record. 15 You have no opinion with respect to 16 specific causes of Ms. Madsen's complaints and 17 symptoms that she attributes to the mesh product, 18 correct? 19 A. Yes. 20 MR. KRAMER: Same objections. 21 BY MR. KEDZIORA: 22 Q. So you cannot say to a reasonable degree of 23 medical probability what has caused those symptoms, 24 correct?</p>	<p style="text-align: right;">Page 104</p> <p>1 MR. KRAMER: Objection to form. Vague as 2 to time. 3 THE WITNESS: I'm sorry. What's the 4 question? 5 MR. KEDZIORA: Actually, I'm going to 6 strike that question. I think we have covered 7 it already. So I'm going to withdraw that 8 question. 9 BY MR. KEDZIORA: 10 Q. Do you have any understanding of 11 plaintiff's current medical condition? 12 A. No. 13 Q. You're not rendering an opinion, expert 14 opinion, about her current condition, are you? 15 A. I am not. 16 Q. And you're not rendering an opinion about 17 the cause of Ms. Madsen's current condition, 18 correct? 19 A. Correct. 20 Q. You're not rendering an opinion about 21 Bard's device, correct? 22 A. Correct. 23 Q. You're not going to show up at trial and 24 offer any critical opinions about Bard or its</p>

EXAMINATION BY MR. KEDZIORA

<p style="text-align: right;">Page 105</p> <p>1 product?</p> <p>2 MR. KRAMER: Objection. Form. Calls for</p> <p>3 speculation.</p> <p>4 THE WITNESS: No.</p> <p>5 BY MR. KEDZIORA:</p> <p>6 Q. Is that no?</p> <p>7 A. What do you mean by form a critical opinion</p> <p>8 for the product?</p> <p>9 Q. I'm asking if you are planning to appear at</p> <p>10 trial and offer any critical opinions about Bard or</p> <p>11 its product?</p> <p>12 A. I'm not planning.</p> <p>13 Q. Do you have any critical opinions about</p> <p>14 Bard or its product?</p> <p>15 A. What do you mean by "critical"?</p> <p>16 Q. Any negative, critical opinions about --</p> <p>17 A. Negative -- no. Nothing negative. No</p> <p>18 negative opinion.</p> <p>19 Q. So no critical or negative opinion about</p> <p>20 Bard or Bard's product?</p> <p>21 A. About this product.</p> <p>22 Q. You do have --</p> <p>23 A. I don't have any negative opinions about</p> <p>24 this product or Bard.</p>	<p style="text-align: right;">Page 107</p> <p>1 one is the imperative one.</p> <p>2 So if you could turn to Page 5 of those</p> <p>3 Instructions For Use that we just -- that I just</p> <p>4 handed to you.</p> <p>5 A. (Nodding head.)</p> <p>6 Q. And, Doctor, do you see a section called</p> <p>7 Adverse Events?</p> <p>8 A. Um-hum.</p> <p>9 Q. And have you seen this instruction</p> <p>10 previously before?</p> <p>11 A. Yes.</p> <p>12 Q. And there are certain risks listed in the</p> <p>13 instruction or actually in the section called</p> <p>14 Adverse Events, correct?</p> <p>15 A. Yes.</p> <p>16 Q. Have you reviewed this instruction for use,</p> <p>17 this one or the similar one that plaintiff's counsel</p> <p>18 has admitted into evidence prior to implanting</p> <p>19 Ms. Madsen's device?</p> <p>20 A. Yes.</p> <p>21 Q. And we went over those potential adverse</p> <p>22 events before, right? So you would agree that any</p> <p>23 of those adverse events could occur after an</p> <p>24 implantation of the Bard product --</p>
<p style="text-align: right;">Page 106</p> <p>1 Q. Do you have any negative opinion about</p> <p>2 other Bard products?</p> <p>3 A. I don't use any other Bard products.</p> <p>4 Q. So the answer is no, you don't have any</p> <p>5 negative opinion about any other Bard product,</p> <p>6 correct?</p> <p>7 A. No.</p> <p>8 Q. Do you know whether Ms. Madsen have tried</p> <p>9 to engage in any sexual intercourse with Mr. Madsen</p> <p>10 after the implant procedure?</p> <p>11 A. No, I do not.</p> <p>12 MR. KEDZIORA: I'm going to mark as</p> <p>13 Exhibit 8 -- let me mark it and hand it to the</p> <p>14 witness please.</p> <p>15 (Whereupon, Upputuri Exhibit</p> <p>16 No. 8 was marked for</p> <p>17 identification.)</p> <p>18 BY MR. KEDZIORA:</p> <p>19 Q. So, Doctor, these are Instructions For Use,</p> <p>20 which are similar to what plaintiff's counsel has</p> <p>21 previously marked as an exhibit. This is a</p> <p>22 different version. We have compared. And I'm just</p> <p>23 going to ask you a question very quickly -- we've</p> <p>24 compared the two versions. We weren't sure which</p>	<p style="text-align: right;">Page 108</p> <p>1 A. Yes.</p> <p>2 Q. -- at issue in this case?</p> <p>3 A. Yes.</p> <p>4 Q. Do you have any reason to question the</p> <p>5 adequacy of the labeling for the Bard mesh product?</p> <p>6 A. No.</p> <p>7 Q. So were all these things that are included</p> <p>8 in the Adverse Events section for Instructions For</p> <p>9 Use all consistent with your understanding of the</p> <p>10 complications that could occur after the use of the</p> <p>11 Align product that was implanted in Ms. Madsen?</p> <p>12 A. Yes.</p> <p>13 Q. And those complications could result in</p> <p>14 pain, correct?</p> <p>15 A. Yes.</p> <p>16 Q. What is your definition of erosion, Doctor?</p> <p>17 A. If the mesh were to extrude itself through</p> <p>18 the vaginal mucosa into the vagina or through the</p> <p>19 vaginal mucosa -- into the bladder.</p> <p>20 Q. Are there different types of erosion?</p> <p>21 A. Yeah. One could be to the bladder. The</p> <p>22 other one could be to the vagina.</p> <p>23 Q. Okay. And both of these types of erosion</p> <p>24 were known to you and the other -- strike that.</p>

EXAMINATION BY MR. KEDZIORA

<p style="text-align: right;">Page 109</p> <p>1 And this type of erosion -- both types of 2 erosion were known to you prior to you implanting 3 Ms. Madsen's product on [REDACTED] [sic] [REDACTED] 2016? 4 A. Yes. 5 Q. The risk of dyspareunia is not unique to 6 the surgery using vaginal mesh, correct? 7 A. No. 8 Q. It can result from other types of 9 procedures? 10 A. Yes. 11 Q. So you can't say for sure what have caused 12 Ms. Madsen's dyspareunia, correct? 13 A. Yes. 14 MR. KRAMER: Objection. Form. 15 BY MR. KEDZIORA: 16 Q. And you cannot tell for sure, if she had 17 other procedure performed, whether she would have 18 also experienced dyspareunia, correct? 19 MR. KRAMER: Objection. Form. Foundation. 20 Calls for speculation. 21 THE WITNESS: Yes. 22 BY MR. KEDZIORA: 23 Q. Before you used the Bard product in 24 Ms. Madsen, you knew you would be implanting a</p>	<p style="text-align: right;">Page 111</p> <p>1 correct? 2 A. Yes. 3 Q. And taking that information into account 4 with the patient's individual circumstances to 5 decide which device, if any, is appropriate for each 6 patient, correct? 7 A. Yes. 8 Q. As part of your medical practice, Doctor, 9 do you implant vaginal mesh used in the treatment of 10 pelvic organ prolapse or stress urinary 11 incontinence? 12 A. Yes. 13 MR. KRAMER: Objection. Form. Compound. 14 BY MR. KEDZIORA: 15 Q. And that is something that you're qualified 16 to do, correct? 17 A. Yes. 18 Q. Doctor, what professional licenses do you 19 currently hold? 20 A. Illinois State Medical License, Illinois 21 State Controlled Substance License, Federal DEA 22 License, and my driver's license. 23 Q. Doctor, are you familiar with material 24 safety data sheets?</p>
<p style="text-align: right;">Page 110</p> <p>1 foreign body into your patient, correct? 2 A. Yes. 3 Q. And you have learned about the body's 4 inflammatory response to foreign materials during 5 medical training, correct? 6 A. Yes. 7 Q. So inflammation has a standard potential 8 effect of -- of implantation of a foreign body 9 into -- a foreign material into human body? 10 A. Yes. 11 Q. Would you agree that inflammation is a 12 normal part of the healing process? 13 A. Yes. 14 Q. And it's expected after surgery? 15 A. Yes. 16 Q. Would you agree that the formation of scar 17 tissues is a normal and expected part of the healing 18 process? 19 A. Yes. 20 MR. KRAMER: Objection. Form. Vague. 21 BY MR. KEDZIORA: 22 Q. You agree, don't you, that physicians are 23 responsible for knowing the potential risks and side 24 effects of the medical devices that they prescribe,</p>	<p style="text-align: right;">Page 112</p> <p>1 A. Yes. 2 Q. Is it your usual practice to review the 3 material safety data sheets for products you use in 4 your medical practice or that you prescribe to 5 patients? 6 A. Usually. 7 Q. You usually review those before implanting 8 or recommending -- 9 A. If it's a new product, yes. 10 Q. In this specific case of Ms. Madsen, did 11 you review the material safety data sheet before 12 implanting the product into Ms. Madsen? 13 A. Yes. 14 Q. Are you aware that Frank Zakerwski, the 15 corporate representative of Chevron Phillips, has 16 testified that the medical caution language in the 17 MSDC [sic], the material data -- material safety 18 data sheet, was not based off of any scientific 19 data? 20 A. No. 21 MR. KRAMER: Objection. Form. 22 Mischaracterizes prior testimony. 23 BY MR. KEDZIORA: 24 Q. Doctor, just a few questions about the pore</p>

EXAMINATION BY MR. KEDZIORA

<p style="text-align: right;">Page 113</p> <p>1 size. Do you recall plaintiff asking if you -- or</p> <p>2 asking you a few questions about the pore size of</p> <p>3 the mesh or making reference to the pore size of the</p> <p>4 mesh?</p> <p>5 A. Vaguely.</p> <p>6 Q. Vaguely.</p> <p>7 You're not an expert in biomaterials, are</p> <p>8 you?</p> <p>9 A. No.</p> <p>10 Q. You're not an expert in the effects of the</p> <p>11 pore size of the mesh and how pore size does or does</p> <p>12 not affect mesh's interaction with the human body,</p> <p>13 are you?</p> <p>14 A. No.</p> <p>15 Q. And from a biomaterial standpoint of view,</p> <p>16 you don't intend to offer any opinions in this case</p> <p>17 about the biomaterial aspect of the mesh as it</p> <p>18 relates to pore size, correct?</p> <p>19 A. Yes.</p> <p>20 Q. Do you know the pore size of the Bard mesh</p> <p>21 product that was implanted into Ms. Madsen?</p> <p>22 A. I can't recall.</p> <p>23 Q. Do you recall, Doctor, plaintiff's counsel</p> <p>24 asking you or referring -- asking you a few</p>	<p style="text-align: right;">Page 115</p> <p>1 A. Correct.</p> <p>2 Q. And you don't know what their</p> <p>3 responsibilities were, correct?</p> <p>4 A. Correct.</p> <p>5 MR. KEDZIORA: Can we just go off the</p> <p>6 record for a second?</p> <p>7 (Discussion off the record.)</p> <p>8 BY MR. KEDZIORA:</p> <p>9 Q. Doctor, have you ever used any medical</p> <p>10 products made out of polypropylene other than the</p> <p>11 Bard product at issue in this case?</p> <p>12 A. Yes.</p> <p>13 Q. What products?</p> <p>14 A. I believe suture material.</p> <p>15 Q. So do you agree that polypropylene is</p> <p>16 suitable to use in human medical device implants?</p> <p>17 MR. KRAMER: Objection. Form. Foundation.</p> <p>18 I think you just asked him a number of</p> <p>19 questions about his qualifications as a</p> <p>20 biomedical engineer.</p> <p>21 THE WITNESS: Could you repeat the question</p> <p>22 please?</p> <p>23 BY MR. KEDZIORA:</p> <p>24 Q. Of course.</p>
<p style="text-align: right;">Page 114</p> <p>1 questions about an e-mail from the research director</p> <p>2 at Bard earlier today? Do you remember that?</p> <p>3 A. Yes, I do.</p> <p>4 Q. You've never worked at Bard, have you?</p> <p>5 A. No.</p> <p>6 Q. And the internal documents that counsel has</p> <p>7 mentioned or referred to during his part of the</p> <p>8 deposition, you don't know why those documents were</p> <p>9 prepared, do you?</p> <p>10 A. No.</p> <p>11 Q. So you don't know what -- the business</p> <p>12 purpose of those documents, correct?</p> <p>13 A. Correct.</p> <p>14 Q. You don't know how those documents were</p> <p>15 used by Bard within the company, correct?</p> <p>16 A. Correct.</p> <p>17 Q. And you don't know what the people's</p> <p>18 name -- I'm sorry. You don't know who the people</p> <p>19 are that -- I'm sorry -- that Mr. Kramer have</p> <p>20 mentioned with respect to those e-mails and --</p> <p>21 A. Correct.</p> <p>22 Q. -- documents?</p> <p>23 And you don't know what those people's jobs</p> <p>24 were, correct?</p>	<p style="text-align: right;">Page 116</p> <p>1 Do you agree -- since you're using</p> <p>2 polypropylene in your practice, would you agree that</p> <p>3 it's proper and suitable for use in the human body?</p> <p>4 MR. KRAMER: Same objections.</p> <p>5 THE WITNESS: Yes.</p> <p>6 MR. KEDZIORA: Okay. I'm going to reserve</p> <p>7 the rest of my time.</p> <p>8 MR. KRAMER: You have 30 seconds.</p> <p>9 MR. KEDZIORA: All right.</p> <p>10 MR. VEZINO: I'm going to run to the</p> <p>11 restroom.</p> <p>12 MR. KRAMER: Okay. Let's hop off the</p> <p>13 record.</p> <p>14 (Recess taken.)</p> <p>15 FURTHER EXAMINATION</p> <p>16 BY</p> <p>17 MR. KRAMER:</p> <p>18 Q. Doctor, do you recall earlier being asked</p> <p>19 questions about your payment for being here today?</p> <p>20 A. Yes.</p> <p>21 Q. And those questions acknowledged that it</p> <p>22 is, in fact, the plaintiff's firm that handed you</p> <p>23 the check for your presence here today, right?</p> <p>24 A. Yes.</p>

FURTHER EXAMINATION BY MR. KRAMER

<p style="text-align: right;">Page 117</p> <p>1 Q. You're probably not aware that defense 2 counsel has entered an agreement with plaintiff's 3 counsel to share in the expense of your deposition 4 today by agreeing to reimburse plaintiff's counsel 5 for half of your time at deposition. 6 Are you aware of that? 7 A. I was not aware of it. 8 Q. And would it matter one way or another in 9 terms of the outcome of your testimony who paid you 10 today? 11 A. No. 12 Q. From what I understand, we are compensating 13 Central DuPage Medical Group, as the payee on the 14 check. Will you receive any of the money 15 personally? 16 A. Some of it, yes. 17 Q. And is it your understanding the monies 18 paid today are to compensate you for time you would 19 otherwise spend billing in your medical practice? 20 A. Yes. 21 Q. You said you received a copy of the 22 complaint from plaintiff's firm in the Madsen versus 23 C.R. Bard case? 24 A. Yes.</p>	<p style="text-align: right;">Page 119</p> <p>1 dated 2008. 2 Q. Do you have any idea if, for a certain 3 duration after the Burch procedure, her stress 4 urinary incontinence symptoms were successfully 5 treated by the Burch procedure? 6 A. Do I know? 7 Q. Yes. 8 A. No, I do not. 9 Q. So if, in fact, her prior Burch procedure 10 had successfully treated her stress urinary 11 incontinence symptoms, you wouldn't know for how 12 long it did successfully treat those symptoms? 13 A. Correct. 14 Q. And when Mrs. Madsen presented to you in 15 [REDACTED] of 2015, did she complain of any 16 dyspareunia that you would have related to the Burch 17 procedure? 18 A. There was no complaint of dyspareunia. 19 Q. Did Mrs. Madsen complain of any pelvic pain 20 that you would relate to the prior Burch procedure? 21 A. It's possible. Any pelvic surgery can 22 cause pelvic pain. 23 Q. My question was a little different. So did 24 Mrs. Madsen complain of any chronic pelvic pain that</p>
<p style="text-align: right;">Page 118</p> <p>1 Q. Do you recall that testimony? 2 A. Yes. 3 Q. Did you read a copy of the complaint? 4 A. Yes, the subpoena. 5 Q. The subpoena. Okay. So do you understand 6 the difference between a subpoena, as a legal 7 document, and a formal legal complaint against the 8 defendant? 9 A. Yes. 10 Q. Okay. And you're saying that you received 11 a copy of the formal complaint against Bard as -- in 12 addition to a subpoena? 13 A. I can't recall now. 14 Q. Okay. I'll just represent to you that we 15 didn't send you a copy. 16 A. Okay. 17 Q. Do you recall earlier discussing that, 18 prior to Ms. Madsen's seeing you, she had undergone 19 a Burch procedure to treat stress urinary 20 incontinence symptoms? 21 A. Um-hum. 22 Q. Do you recall the specific date that she 23 had the Burch? 24 A. She stated 2002, and in another record it's</p>	<p style="text-align: right;">Page 120</p> <p>1 you would relate to her Burch procedure at her 2 initial visit? 3 A. No. 4 Q. And did Mrs. Madsen complain of any chronic 5 groin pain that you would have related to the prior 6 Burch procedure at her initial visit? 7 A. No. 8 Q. And you had mentioned on Page 8 of your 9 records here -- 10 A. Which record? 11 Q. I believe -- I marked it as Exhibit 1. 12 A. Okay. 13 Q. I believe -- that list of numbers, you said 14 gravida 3, para 2, 012? 15 A. Um-hum. 16 Q. And then you explained that that means she 17 had three pregnancies, two of which she delivered 18 successfully and then the 012 indicates that one of 19 those was either a miscarriage or a spontaneous 20 abortion? 21 A. Um-hum. 22 Q. Does that mean that she had an elective 23 abortion? 24 A. Not necessarily.</p>

FURTHER EXAMINATION BY MR. KRAMER

<p style="text-align: right;">Page 121</p> <p>1 Q. Do you know whether or not Mrs. Madsen had</p> <p>2 an elective abortion?</p> <p>3 A. No, I do not.</p> <p>4 Q. Then over on Page 9 in the past medical</p> <p>5 history list of symptoms there, do you recall</p> <p>6 discussing that abnormal Pap smear that</p> <p>7 Ms. Madsen -- Mrs. Madsen had in her medical</p> <p>8 history?</p> <p>9 A. No.</p> <p>10 Q. Okay. Well, you were asked questions</p> <p>11 requiring you to verify that Mrs. Madsen had an</p> <p>12 abnormal Pap smear at some point before seeing you,</p> <p>13 and I just wanted to clarify.</p> <p>14 How recently had she experienced an</p> <p>15 abnormal Pap smear before seeing you?</p> <p>16 A. Ten years prior because it says, "All</p> <p>17 normal Pap smears in the last decade."</p> <p>18 Q. I would like to refer to the cardiology</p> <p>19 records. You don't really need to look at it. I</p> <p>20 think we discussed earlier that the cardiologist</p> <p>21 confirmed Mrs. Madsen had rare isolated PVCs?</p> <p>22 A. Yes.</p> <p>23 Q. Do you recall that?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 123</p> <p>1 30 minutes to show to Mrs. Madsen, explaining some</p> <p>2 of the risks involved with the procedure?</p> <p>3 A. Yes.</p> <p>4 Q. Have you seen the video yourself?</p> <p>5 A. Yes.</p> <p>6 Q. Do you know what the contents of the video</p> <p>7 are?</p> <p>8 A. Yes.</p> <p>9 Q. And then the FDA warnings that you</p> <p>10 discussed with Mrs. Madsen, presumably you read</p> <p>11 those FDA warnings?</p> <p>12 A. Yes.</p> <p>13 Q. And you are aware of the content of those</p> <p>14 FDA warnings?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And I'm going to ask you whether or</p> <p>17 not either of those things contain certain</p> <p>18 information. Okay?</p> <p>19 A. Okay.</p> <p>20 Q. Do either of those things state that a</p> <p>21 director of research and development at Bard</p> <p>22 concluded that the mesh products on the market</p> <p>23 including the Bard Align TO were overengineered with</p> <p>24 regard to strength of the biologic requirement?</p>
<p style="text-align: right;">Page 122</p> <p>1 Q. Would that finding increase the risk of any</p> <p>2 postoperative mesh complication?</p> <p>3 A. No.</p> <p>4 Q. And do you recall being asked some</p> <p>5 questions about whether or not you knew an</p> <p>6 individual from Chevron testified that the material</p> <p>7 safety data sheet health caution language lacked</p> <p>8 supporting scientific data? Do you recall being</p> <p>9 asked --</p> <p>10 A. Yes.</p> <p>11 Q. -- whether you knew that?</p> <p>12 Are you aware that the same individual from</p> <p>13 Chevron stated, in fact, that he did not know what</p> <p>14 data supported the MSDS health caution language but</p> <p>15 that all information in the MSDS is backed by</p> <p>16 scientific data? Did you know that?</p> <p>17 A. No, I did not.</p> <p>18 Q. Now, if we go back to Exhibit No. 1, and we</p> <p>19 turn to Page 7, do you recall defense counsel asking</p> <p>20 you questions about the FDA warnings that you</p> <p>21 discussed with Mrs. Madsen?</p> <p>22 A. Yes.</p> <p>23 Q. And do you recall defense counsel asking</p> <p>24 you about the video of the sling procedure that took</p>	<p style="text-align: right;">Page 124</p> <p>1 A. No.</p> <p>2 Q. Do either of those things that you showed</p> <p>3 Ms. Madsen prior to her mesh implant surgery include</p> <p>4 information that a director of research and</p> <p>5 development at Bard concluded the pore size of mesh</p> <p>6 on the market resulted in formation of a scar plate</p> <p>7 that was rigid and does not integrate well over time</p> <p>8 with the host tissue?</p> <p>9 A. No.</p> <p>10 Q. Did either of those things that you showed</p> <p>11 Ms. Madsen prior to her mesh implant procedure state</p> <p>12 that Bard felt the design of a more light-weight</p> <p>13 open-pore mesh was needed?</p> <p>14 A. No.</p> <p>15 Q. Did either of the things that you showed</p> <p>16 Ms. Madsen prior to her mesh implant procedure state</p> <p>17 that mesh on the market produced by Bard shrunk</p> <p>18 between 30 and 50 percent after implantation?</p> <p>19 A. No.</p> <p>20 Q. And did either of those things that you</p> <p>21 showed Mrs. Madsen prior to her mesh implant</p> <p>22 procedure state that the 30 to 50 percent shrinkage</p> <p>23 of the mesh postimplantation was directly correlated</p> <p>24 to scar plate formations?</p>

FURTHER EXAMINATION BY MR. KRAMER

<p style="text-align: right;">Page 125</p> <p>1 A. No.</p> <p>2 MR. KEDZIORA: Object to form. Compound.</p> <p>3 BY MR. KRAMER:</p> <p>4 Q. Did either of the things that you showed</p> <p>5 Mrs. Madsen prior to her mesh implant procedure</p> <p>6 include a material safety data sheet from Phillip</p> <p>7 Sumika relating to Marlex polypropylene that's</p> <p>8 contained in the Align IFU explicitly stating that</p> <p>9 it is not to be used for the implantation in</p> <p>10 humans?</p> <p>11 A. No.</p> <p>12 Q. Did either of the things that you showed to</p> <p>13 Mrs. Madsen prior to her mesh implant procedure</p> <p>14 explain that Phillips Sumika stopped selling its</p> <p>15 Marlex polypropylene to Bard once it found out that</p> <p>16 Bard was using it for device implants but then Bard</p> <p>17 created a shell company so that it could continue</p> <p>18 using the Marlex polypropylene in mesh devices like</p> <p>19 the Align TO?</p> <p>20 MR. KEDZIORA: Objection. Form.</p> <p>21 THE WITNESS: No.</p> <p>22 MR. KEDZIORA: Compound.</p> <p>23 MR. KRAMER: I don't have anything else.</p> <p>24 MR. KEDZIORA: Off the record for a second.</p>	<p style="text-align: right;">Page 127</p> <p>1 BY MR. KEDZIORA:</p> <p>2 Q. Would it be more than a few, more than ten?</p> <p>3 A. Oh, yeah, easily. More than.</p> <p>4 Q. Have you used any other manufacturers'</p> <p>5 sling products other than Bard?</p> <p>6 MR. KRAMER: Objection. Form. Scope.</p> <p>7 This is all beyond the scope of my --</p> <p>8 THE WITNESS: Recently.</p> <p>9 BY MR. KEDZIORA:</p> <p>10 Q. Which one?</p> <p>11 A. I can't recall the name of the manufacturer</p> <p>12 of the one sling the hospital is using right now</p> <p>13 so...</p> <p>14 MR. KEDZIORA: Okay. No further questions.</p> <p>15 Thank you, Doctor.</p> <p>16 MR. KRAMER: Thank you for your time.</p> <p>17 FURTHER DEPONENT SAITH NOT.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p style="text-align: right;">Page 126</p> <p>1 FURTHER EXAMINATION</p> <p>2 BY</p> <p>3 MR. KEDZIORA:</p> <p>4 Q. Doctor, just a few follow-up questions.</p> <p>5 So we talked before about Instructions For</p> <p>6 Use and the adverse effects that are listed in that</p> <p>7 section called Adverse Effects. Do you recall that?</p> <p>8 A. Yes.</p> <p>9 Q. Would you agree that any of those</p> <p>10 complications could result in pain?</p> <p>11 MR. KRAMER: Objection. Form. Scope.</p> <p>12 THE WITNESS: Yes.</p> <p>13 BY MR. KEDZIORA:</p> <p>14 Q. Doctor, when did you first start using</p> <p>15 vaginal mesh sling to treat stress urinary</p> <p>16 incontinence in your patients?</p> <p>17 MR. KRAMER: Same objection.</p> <p>18 THE WITNESS: 2006.</p> <p>19 MR. KRAMER: Times up.</p> <p>20 BY MR. KEDZIORA:</p> <p>21 Q. How many have you implanted prior to</p> <p>22 implanting Ms. Madsen with Bard's product?</p> <p>23 A. I don't have a number.</p> <p>24 MR. KRAMER: Objection. Form. Scope.</p>	<p style="text-align: right;">Page 128</p> <p>1 STATE OF ILLINOIS)</p> <p>2) SS:</p> <p>3 COUNTY OF COOK)</p> <p>4 Kathleen E. Maloney, License</p> <p>5 No. 084-003235, being first duly sworn, on oath says</p> <p>6 that she is a Certified Shorthand Reporter, that she</p> <p>7 reported in shorthand the testimony given at the</p> <p>8 taking of said deposition, that the deponent was</p> <p>9 duly sworn by her and that the deposition is a true</p> <p>10 record of the testimony given by said deponent.</p> <p>11 And further, that she is not connected by</p> <p>12 blood or marriage with any of the parties to this</p> <p>13 action, nor is she a relative or employee or</p> <p>14 attorney or counsel of any of the parties, or</p> <p>15 financially interested directly or indirectly in the</p> <p>16 matter in controversy.</p> <p>17</p> <p>18</p> <p>19 _____ Certified Shorthand Reporter</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

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